

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	<u>September 17, 2024</u>	<input checked="" type="checkbox"/>	Consent	<input type="checkbox"/>	Regular
		<input type="checkbox"/>	Ordinance	<input type="checkbox"/>	Public Hearing
Department:	<u>Human Resources</u>				
Submitted By:	<u>Human Resources</u>				
Submitted For:	<u>County Administration</u>				

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve Adoption Agreement between Palm Beach County Board of County Commissioners (Board) and Bencor, Inc., and the attached Appendix, for final implementation of the Board approved 401 (a) Plan.

Summary: The Board previously approved the 401(a) Special Pay Plan and directed staff to solicit vendors for a 401(a) pay plan. Following a Request for Proposal (RFP) Bencor, Inc. was the selected vendor to implement and administer Palm Beach County’s (County) 401(a) plan. Pursuant to BCC direction, the 401(a) Plan contributions will be submitted by the designated Plan participants upon separation from the County via compensable vacation and/or sick leave balances, consistent with the County’s Merit Rule provisions regarding payout upon separation from employment. Additionally, the Board directed staff to include a stipulation to the Plan (attached Appendix) to offset a loss of income for employees who would incur a ten percent (10%) penalty by reason of their age, or early withdrawal of their funds following separation. Therefore, Staff is seeking approval of the finalized Adoption Agreement and the attached Appendix for an effective date of October 19, 2024 (two pay periods after Board approval). **Countywide (DO)**

Background and Justification: 401(a) plans are investment tools that are also known as Special Pay Plans (SPP) that can be customized for specific group participants. Through these plans, the employer must contribute any accumulated Special Pay, designated under the rules of the plan, directly into the Plan. Special Pay is defined as income derived from compensable vacation and/or sick balances according to the County’s Merit Rule provision for payout upon separation from the County. To be eligible for the Plan, an employee must be in a predefined category of employees as designated by the BCC.

Attachments:

1. Adoption Agreement
2. Adoption Agreement Appendix
3. Bencor Basic Plan Document 1
4. IRS Letter dated 6/30/2020
5. Bencor Investment Direction Election
6. Bencor Master Directed Benefit Custody Agreement
7. Presentation PowerPoint

Recommended by:	<hr/> Department Director	<u>9/12/24</u> Date
Approved by:	<hr/> Assistant County Administrator	<u>9/16/24</u> Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2025	2026	2027	2028	2029
Capital Expenditures					
Operating Costs	N/A	N/A	N/A	N/A	N/A
External Revenues					
Program Income(County)					
In-Kind Match(County)					
NET FISCAL IMPACT					
#ADDITIONAL FTE					
POSITIONS (CUMULATIVE)					

Is Item Included in Current Budget? Yes ___ No
 Does this item include the use of federal funds? Yes ___ No
 Does this item include the use of State Funds? Yes ___ No

Budget Account No: Fund _____ Agency _____ Organization _____ Object _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Implementation is budget neutral.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

ASDUA 9/12/24
 LK 9/12 OFMB QA 9/12

Brenda Machado 9/12/24
 Contract Dev. & Control

B. Legal Sufficiency



 Assistant County Attorney

C. Other Department Review

 Department Director

**BENCOR
NATIONAL GOVERNMENT
EMPLOYEES RETIREMENT PLAN™**

**Adoption Agreement
001**

This Adoption Agreement is executed by and between the government employer named below ("Employer") and BENCOR, Inc. ("BENCOR"), in accordance with the provisions of the BENCOR National Government Employees Retirement Plan™ ("BENCOR Plan"). This Adoption Agreement may be used only with the BENCOR Plan, which is IRS Pre-Approved Bencor Basic Plan Document 01. Failure to fill out this Adoption Agreement carefully and completely may result in the Plan not qualifying under Internal Revenue Code Section 401(a). The Employer hereby adopts and agrees to be bound by all the terms of the BENCOR Plan and provides the following information and makes the following elections under the BENCOR Plan:

1. EMPLOYER AND PLAN INFORMATION.

- (a) Employer Name: Palm Beach County Board of County Commissioners
 Type of Entity: State County Municipality Township Police/Fire
 College, University or Community College K-12 School District
 Other (specify): _____
- (b) Employer Address: 301 North Olive Avenue
West Palm Beach, FL 33401
- (c) Employer Telephone Number: (561) 616-6873
- (d) Employer Fiscal Year Ends on: 09/30
- (e) Plan Name: Palm Beach County 401(a) Special Pay Plan ("Plan")
- (f) Plan Number (001, 002, etc.): 001
- (g) Original Effective Date of Plan Adoption: 1/1/24
(Not earlier than first day of Plan Year within which the original Plan is adopted)
- (h) If an Amendment and Restatement, Effective Date of such Amendment and Restatement: _____
(Not earlier than first day of Plan Year within which the amendment and restatement is adopted)

**THIS PLAN MAY BE ADOPTED ONLY BY A STATE GOVERNMENT
OR A POLITICAL SUBDIVISION THEREOF OR AN AGENCY OR
INSTRUMENTALITY OF EITHER OF THE FOREGOING.**

2. **PLAN DEFINITIONS.**

(a) **Plan Year.** The Plan Year is the 12-month period:

commencing each: 1/1

and ending the following: 12/31
(enter date 12 months subsequent to commencement of Plan Year)

except that if the initial Effective Date is a date other than the first day of the Plan Year specified above, the first Plan Year, other than for purposes of the limitation year under Plan Section 7.03, is the short period beginning on the Effective Date and ending on the immediately following Plan Year ending date.

(b) **Compensation.** For purposes under the Plan, including the allocation of all contributions, Compensation means (*check one*):

INCLUSIONS

- (i) W-2 wages for the calendar year ending with or within the Plan Year
- (ii) Wages actually paid during the Plan Year that are reportable as wages on Form W-2 (even though reported in two different taxable years of the recipient)
- (iii) The basic annual rate of compensation in effect at the beginning of each Plan Year

EXCLUSIONS

Compensation means all compensation, as defined above, *except* for amounts in excess of the annual limit described in Plan Section 11.09, and also excluding (*check only those items that are excluded, if any*):

- (iv) Overtime pay
- (v) Bonuses
- (vi) Amounts earned prior to the date of commencement of participation in the Plan
- (vii) Single sum amounts received on account of death or separation from service under a bona fide vacation, compensatory time or sick pay plan or under severance pay plans

SIGNATURE PAGE

(Revised 02/04/22)

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and BENCOR, INC. has hereunto set its hand the day and year above written.

ATTEST:

Attest:

JOSEPH ABRUZZO
CLERK AND COMPROLLER

By: _____
Deputy Clerk

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:
By: _____
Maria Sachs, Mayor

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

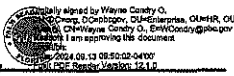
By: _____
County Attorney

BENCOR:
US BENCOR MidAmerica
Company Name

Signature

APPROVED AS TO TERMS AND CONDITIONS

Wayne
By: Condry O. _____
Department Director



Typed Name: Hugh Bishop

Title: President

(corp. seal)

BENCOR, INC. HEREBY AUTHORIZES USE OF THE BENCOR PLAN BY THE ABOVE-NAMED EMPLOYER AS REPRESENTED BY THIS ADOPTION AGREEMENT AND THE ACCOMPANYING PLAN DOCUMENT AND TRUST (OR CUSTODIAL) AGREEMENT, EACH OF WHICH IS NUMBERED AND REGISTERED WITH BENCOR, INC. ANY USE OF THESE NUMBERED DOCUMENTS BY ANY OTHER ENTITY IS EXPRESSLY PROHIBITED BY THE COPYRIGHT LAWS OF THE UNITED STATES.

{BENCOR/CSONY/L1}
(09/12/2019)
Reformatted
(08/16/2021)

BENCOR, INC.
BENCOR Administrative Services
P.O. Box 1429
Brentwood, TN 37024-1429
Plan Sponsors: 844-249-4520 Participant Service Center:
866-296-9712 Fax: 888-500-7111

- (viii) Any compensation that is in excess of the FICA contribution base described in Code Section 3121(a)(1) that is in effect at the beginning of the Plan Year
- (ix) Compensation provided in any form other than cash

POST YEAR-END PAYMENTS

Compensation (*not excluded above*) shall include (*check one*):

- only amounts for the year in which actually paid, or
- amounts paid both during the year and within the immediately subsequent year, but only if attributable to that previous year and paid within 2½ months after such year end.

CERTAIN DEFERRED AND OTHER COMPENSATION

Compensation (*check one*):

- shall
- shall not

include any amount deferred and not otherwise currently counted in the Employee's gross income pursuant to a grandfathered government cash or deferred plan under Code Section 401(k), an eligible deferred compensation plan under Code Section 457(b), a tax-sheltered annuity plan under Code Section 403(b), a cafeteria plan under Code Section 125 or elective amounts not included in the Participant's gross income by reason of Code Section 132(f)(4).

- (c) Plan Administration. The Bencor Plan shall be administered by a third-party Administrator, who shall be appointed from time to time by BENCOR. The Administrator shall have responsibility for all functions specifically described herein, in the BENCOR Plan and its Trust (or Custodial) Agreement. Other day-to-day administrative functions and decisions shall be handled by (*check one, and provide additional information, if applicable*):

- (i) A Committee consisting of 3 (*number*) persons identified in the chart below; individuals may be identified by specific name or title. Place an asterisk [*] in the column after the name or title of each person who is authorized to act for and on behalf of the Committee in communicating directions.

Name and/or Title	*	Address	Telephone Number
Assistant County Administrator (HR)	*	301 North Olive Ave., West Palm Beach, FL 33401	(561)355-3838
Director Human Resources	*	301 North Olive Ave., West Palm Beach, FL 33401	(561)616-6888
Director Finance and Budget	*	301 North Olive Ave., West Palm Beach, FL 33401	(561)355-2395

- (ii) The following person:

Name and/or Title: _____
Address: _____
Telephone Number: _____

- (iii) Other (specify):

Name: _____
Address: _____
Telephone Number: _____
Email: _____
If an employee, give title: _____

Unless BENCOR is notified otherwise in writing by one or more of the persons with authority designated above, directions regarding account investments may be accepted only from the Administrator.

- (d) Agent for Service of Process. The Agent for Service of Process is (check one and provide additional information, if applicable):

- (i) Person(s) specified in (c) above

- (ii) Other (specify):

Name: Palm Beach County Attorney's Office
Address: 301 N. Olive Ave., West Palm Beach, FL 33401
If an employee, give title: _____

(e) Normal Retirement Age. Normal Retirement Age is (*check one*):

- (i) The normal retirement age specified by the retirement system of the state, city, county or other jurisdiction generally applicable to employees of the Employer
- (ii) Age _____ or, if later, completion of _____ (*not more than 10*) years of participation in the Plan
- (iii) Not applicable; the Plan does not permit in-service distributions prior to age 62.

Effective for Plan Years beginning on or after January 1, 2015 (or any later date permitted by IRS Notice 2012-29), a Normal Retirement Age of less than age 62 must satisfy Treasury Regulation 1.401(a)-1(b)(2), except for a group of employees substantially all of whom are qualified public safety employees, for whom normal retirement age may be age 50 or later.

See Article 11 of the BENCOR Plan for other important definitions.

3. ELIGIBILITY PROVISIONS.

(a) Eligible Classes of Employees.

- (i) **For purposes of contributions under Part 4(a), all (*check each that applies*)**
 - Part-Time, Seasonal and Temporary Employees shall be eligible to participate in the Plan for any given Plan Year, except (*check applicable exclusions*) --**
 - (A) **Employees who currently are covered by and actively participating in (*check each applicable category*):**
 - a government retirement system
 - any retirement system or plan sponsored by the Employer (*other than this Plan*)
 - a tax deferred annuity under Code Section 403(b) at the Employer
 - an eligible deferred compensation plan of the Employer under Code Section 457(b)

Any exclusions selected in (A) above do not apply to retirees receiving benefits from such plans or to persons entitled only to deferred vested benefits who are not currently participating in such plans.

- (B) Highly Compensated Employees, as defined by Plan Section 11.15
- (C) Employees who have not reached at least age _____ by the end of the Plan Year *(Maximum age 55)*
- (D) Employees who have completed fewer than _____ years of service (as defined by applicable state law) with the Employer by the end of the Plan Year *(Maximum 10 years)*
- (E) Employees who have retired under the applicable state retirement system and are receiving benefits from that system but who have returned to work
- (F) Employees who work less than full-time in a non-professional capacity who also are students at the school, college, university or affiliated organization that employs them, as determined under the standards of Rev. Proc. 2005-11.

(ii) For purposes of contributions under Part 4(b), all Employees who, on or after October 19, 2024, except those whose employment terminates on account of death, shall be eligible to participate in the Plan who are are not *(check one of the foregoing and then check all that apply below):**

- | | |
|--|--|
| <input type="checkbox"/> Instructional staff as defined by state law | <input type="checkbox"/> Cafeteria/food service workers |
| <input type="checkbox"/> Educational support employees as defined by state law | <input type="checkbox"/> Janitorial/custodial staff |
| <input type="checkbox"/> Technical employees | <input type="checkbox"/> Health care employees |
| <input checked="" type="checkbox"/> Full-time administrators | <input type="checkbox"/> Secretaries/clerks |
| <input checked="" type="checkbox"/> Permanent employees | <input type="checkbox"/> Hourly employees |
| <input type="checkbox"/> Superintendents/presidents | <input type="checkbox"/> Drivers/transportation employees |
| <input type="checkbox"/> Supervisory employees | <input type="checkbox"/> Support employees (non-union) |
| <input type="checkbox"/> Confidential employees | <input type="checkbox"/> Support employees (civil service) |
| <input type="checkbox"/> Public school administrators | <input checked="" type="checkbox"/> Executive and/or professional support staff |
| <input type="checkbox"/> Group program employees <i>(specify program name):</i>
_____ | <input checked="" type="checkbox"/> All full-time employees |
| <input type="checkbox"/> School resource/police officers | <input type="checkbox"/> Part-time, seasonal and temporary employees |
| | <input type="checkbox"/> Non-Administrative, Supervisory, Consultative and Psychological employees |

Non-union classified employees

Non-bargaining unit employees

Bargaining unit employees who are members of
(specify union(s)):

Employees who have completed fewer than
_____ years of service (as defined by state
law) with the Employer by the end of the Plan
Year (Maximum 10 years)

Employees who are under the age of _____
by the end of the Plan Year (Maximum age
55)

Other classification similar to ones listed in
this item, not related to age or years of
service and not naming specific individuals
(specify):

Permanent part-time employees (that have
accumulated sick and vacation leave
balances)

*provided that any such eligible Employees who are members of a bargaining unit will not be eligible unless such bargaining unit is specified

(b) Waiver of Participation. Individuals shall not be permitted to waive the right to participate in the Plan.

4. CONTRIBUTIONS.

In accordance with Article 3 of the BENCOR Plan, the option(s) chosen in this section must result in contributions being made for the exclusive benefit of Participants and Beneficiaries and be of a substantial and recurring nature as required by Treasury Regulations Sections 1.401-1(a)(3) and 1.401-1(b)(2).

(a) **For every eligible employee selected in Part 3(a)(i) above,** the following types of Employer Basic Contributions are provided under the Plan (check each applicable type and fill in other information, as applicable):

(i) Employer pick-up contributions under Code Section 414(h)(2), made on an employee salary reduction basis by each eligible Participant, in the amount of (insert percentage greater than 0%) _____ % of each eligible Participant's Compensation

(ii) Employer fixed contributions in the amount of (insert percentage greater than 0%) _____ % of each eligible Participant's Compensation

(iii) Employer discretionary contributions in amounts determined annually by written action of the Employer prior to the close of the Plan Year, allocated to each Participant's Account in proportion to his or her Compensation for the year

Use Attachment A if contribution types or amounts vary by eligible class of employee.

(b) For every eligible employee selected in Part 3(ii) above, the following types of Employer Special Pay Contributions are provided under the Plan for which an Employee does not have the option of receiving a current cash payment in lieu of the contribution specified (check each applicable contribution type and fill in other information, as applicable):

(i) Employer contributions in the amount of 100 % of a Participant's accumulated and unused sick leave pursuant to then-existing County policy of not less than (check one and insert any minimum dollar amount or time period that must be contributed):

MINIMUM \$ 2,500 _____ days,

but not more than (check one and insert any maximum dollar amount or time period for contribution to the Plan):

MAXIMUM \$ _____ _____ days.

(ii) Employer contributions in the amount of 100 % of a Participant's accumulated and unused vacation leave of not less than (insert any dollar amount or time period that must be contributed):

MINIMUM \$ 2,500 _____ days,

but not more than (check one and insert any maximum dollar amount or time period for contribution to the Plan):

MAXIMUM \$ _____ _____ days.

If both Part 4(b)(i) and 4(b)(ii) are selected, for purposes of meeting any minimum contribution requirement above, a Participant's sick and vacation leave shall be combined and the total of the two must be greater than or equal to \$2,500.

Use Attachment A if contribution types or amounts vary by eligible class of employee.

If local laws or the Employer's employment policies refer to accumulated sick and/or vacation leave by some other name (e.g., "annual leave," "personal paid time off" or "terminal pay"), insert applicable terminology below. Note that any such leave must accrue over the employee's employment history and be available for use by the employee at his or her option for sickness, vacation or other time off work, without imposition of other conditions such as training or other duties or severance.

Accumulated sick leave is called: Eligible sick leave pursuant to existing employer policy

Accumulated vacation leave is called: Eligible vacation leave pursuant to existing employer policy

For purposes above, the Employer contributions shall be credited to each eligible Participant's Account (*check one or more as applicable*):

for each Plan Year

for the Plan Year of the Participant's separation from service

for the Plan Year(s) during which the Participant is enrolled in a Deferred Retirement Option Program authorized by applicable state or local law

For the _____ (*maximum of 5*) Plan Year(s) preceding the year of the Participant's contracted retirement or other fixed termination of employment

for each Plan Year as of the end of which the Participant has unused leave time

Any dollar amount of eligible accumulated leave shall be based upon the product of the Participant's (*check one*):

hours days weeks

of eligible accumulated leave, and his/her (*check one*):

current rate of pay

rate(s) of pay in effect when the leave was earned

rate of pay as prescribed by applicable statute or written employment policy for each eligible Participant

(c) Rollover contributions to this Plan by employees from another eligible retirement plan (*check one*):

are permitted

are not permitted

See Plan Section 7.03 for applicable Internal Revenue Code limitations on annual additions.

5. **INVESTMENT OF PLAN ASSETS.** Plan assets shall be invested at the direction of (*check one in each category*):

Employer Basic Contributions specified in Part 4(a):

(i) The Employer

(ii) Participants (*self-directed investment of individual Accounts by Participants*)

- (iii) Not applicable (*these contributions are not permitted above*)

Employer Special Pay Contributions specified in Part 4(b):

- (i) The Employer
- (ii) Participants (*self-directed investment of individual Accounts by Participants*)
- (iii) Not applicable (*these contributions are not permitted above*)

Employee Rollover Contributions:

- (i) The Employer
- (ii) Participants (*self-directed investment of individual Accounts by Participants*)
- (iii) Not applicable (*these contributions are not permitted above*)

6. **DISTRIBUTIONS.** A Participant's Account shall be distributed pursuant to Article 6 of the Plan document. The following options apply under this Plan (*check as applicable*):

REQUIRED

- (i) **Lump Sum Payment** - Payable as soon as administratively feasible after the Participant's separation from service (*This is the normal form of payment.*)
- (ii) **Direct Rollover** - Payable in whole or in part directly to another eligible retirement plan as described in Plan Section 6.02(f).

OPTIONAL

- (iii) **Installment Payments** - Payable on future dates elected by the Participant
- (iv) **Deferred Lump Sum Payment** - Payable on a future date elected by the Participant
- (v) **Annuity Contract** - Payments at such time and in such form as selected by the Participant under any group annuity contract funding the Plan or individual non-transferrable annuity purchased for the Participant's Account
- (vi) **In-Service Distributions** - Transfers to a state retirement system in which the Participant also participates to purchase additional service credit under that system

7. **LOANS.** Subject to the procedures and limitations set forth in Plan Section 6.05, a Participant may borrow from his/her (*check all that apply*):
- (i) Employer Basic Contribution Account
 - (ii) Employer Special Pay Contribution Account
 - (iii) Rollover Contribution Account
 - (iv) Not Applicable (loans are not permitted under the Plan)
8. **AMENDMENT INFORMATION.** The terms of this Adoption Agreement may be amended from time to time by a written amendment executed by the Employer and BENCOR. BENCOR may amend the Adoption Agreement and/or the BENCOR Plan if the amendment is one that is required by law to maintain the qualified status of the Plan under Code Section 401(a) or to facilitate administration. If the Employer rejects an amendment that is required by law or that facilitates administration within any time frame specified by the amendment, the Employer's Plan will cease to be considered an IRS approved pre-approved plan and will become an individually designed plan. BENCOR will inform the Employer of any amendments that are made to the Plan or of the discontinuance or abandonment of the BENCOR Plan. The elections or specifications set forth in this Adoption Agreement may be amended from time to time by the Employer by execution of a new Adoption Agreement or other written amendment accepted by BENCOR, which shall be effective as provided therein or on such later date as the new agreement or amendment is accepted by BENCOR. No amendment to the Plan shall deprive any Beneficiary, Participant or former Participant of any benefits to which he/she may be entitled thereunder, unless such amendment is required for the Plan to meet those requirements of Code Section 401(a) that apply to governmental plans.
9. **DESIGNATION OF TRUSTEE AND SECURITIES ACT OF 1933.** The Employer designates the Trustee (or Custodian), as named from time to time by BENCOR, to accept, hold and manage contributions made under the Plan pursuant to the terms of the Trust (or Custodial) Agreement, a copy of which has been delivered to the Employer, and in accordance directions of the Administrator of the Plan. The Employer shall be notified by BENCOR of any change in the Trustee (or Custodian) or amendment to the Trust (or Custodial) Agreement. Operation of the fund will be governed by the terms of the Trust (or Custodial) Agreement as in effect from time to time. In the case of an investment option or vehicle held under the Trust (or Custodial) Agreement that is subject to the Securities Act of 1933, and provided the participants' interest in the Plan is exempt from the requirements of such Act, the participants or their beneficiaries shall not, except upon their written, telephonic or electronic request to the Administrator or by written instruction of the Employer to the Administrator, be provided with copies of any prospectuses, financial statements and reports, or of any other materials relating to such investment option or vehicle (including, without limitation, materials provided to the Plan relating to the exercise of voting, tender or similar rights that are incidental to the holding of an ownership interest in such investment option or vehicle).

10. EMPLOYER SIGNATURE. The Employer acknowledges that it has counseled with its own selected legal and tax advisers concerning its authority to adopt the Plan and with respect to the legal, tax and financial consequences of the Plan for the Employer and its eligible employees. The Employer understands that it may rely upon approval of the BENCOR Plan by the Internal Revenue Service as a pre-approved plan to the extent permitted by Revenue Procedures 2016-37 and 2017-41, only if the Employer's plan is identical to the pre-approved plan, and if this Adoption Agreement is completed by selecting from the available choices and without any substantive textual changes, amendments, deletions or modifications to the Adoption Agreement or the BENCOR Plan, and as long as all other requirements of Revenue Procedures 2016-37 and 2017-41 for such reliance have been satisfied. To obtain reliance with respect to initial qualification of the Plan as adopted by the Employer *with any substantive textual changes*, the Employer, with the assistance of the Administrator, may apply to the Internal Revenue Service for its own determination letter to obtain reliance on qualification. The person signing below on behalf of the Employer represents that he/she has the requisite authority to act for the Employer in the adoption of this Plan and designation of the Trustee (or Custodian); and BENCOR, the Trustee (or Custodian) and the Administrator are entitled to rely on that authority, and further each one shall be fully protected in taking, permitting or omitting any action with respect to the Plan on the faith of that authority and all subsequent actions and directions of the Employer, and no one of them shall incur any liability for carrying out the actions and directions of the Employer, provided that the actions or directions are consistent with the terms of this Plan and are not in violation of the applicable law.

[THIS SPACE IS INTENTIONALLY LEFT BLANK]

**ATTACHMENT A
TO THE
BENCOR
NATIONAL GOVERNMENT
EMPLOYEES RETIREMENT PLAN™
ADOPTION AGREEMENT**

Specify the group from Part 3 and the applicable percentages or amounts from Part 4.

ELIGIBLE EMPLOYEE CLASS				
EMPLOYER BASIC CONTRIBUTIONS				
4(a)(i) Employer Pick-up Contributions <i>(specify percent greater than 0%)</i>				
4(a)(ii) Employer Fixed Contributions <i>(specify percent greater than 0%)</i>				
4(a)(iii) Employer Discretionary Contributions				
EMPLOYER SPECIAL PAY CONTRIBUTIONS				
4(b)(i) Employer Sick Leave Contributions MIN/MAX (if any)				
4(b)(ii) Employer Vacation Leave Contributions MIN/MAX (if any)				
ROLLOVER				
4(c) Rollover Contributions				

CONTRACT EXHIBIT C

NONGOVERNMENTAL ENTITY HUMAN TRAFFICKING AFFIDAVIT
Section 787.06(13), Florida Statutes

THIS AFFIDAVIT MUST BE SIGNED AND NOTARIZED

I, the undersigned, am an officer or representative of BENCOR, Inc.
(Consultant) and attest that Consultant does not use coercion for labor or services as defined in
section 787.06, Florida Statutes.

Under penalty of perjury, I hereby declare and affirm that the above stated facts are true and
correct.


(signature of officer or representative)

Hugh Bishop Executive CHAIRMAN
(printed name and title of officer or representative)

State of Florida, County of Palm Beach

Sworn to and subscribed before me by means of physical presence or online notarization this,
13th day of September, by Hugh Bishop.

Personally known OR produced identification .

Type of identification produced _____.

Carole J. Dubosky
NOTARY PUBLIC
My Commission Expires: 3/19/2026
State of Florida at large



CAROLE J. DUBOSKY
Notary Public
State of Florida
Comm# HH234281
Expires 3/19/2026

(Notary Seal)

**APPENDIX TO THE
PALM BEACH COUNTY 401(a) SPECIAL PAY PLAN (“PLAN”)
FOR
APPLICATION FOR EARLY WITHDRAWAL OFFSET PROVISION PAYMENT**

All Employer contributions to the 401(a) Special Pay Plan are exempt from Social Security (6.2%) and Medicare (1.45%) taxes. Therefore, employees whose taxable wages for the year of separation from service are less than that year’s Social Security wage base (\$168,600 for 2024) enjoy tax savings of 7.65%; employees whose taxable wages for the year of separation from service are greater than that year’s Social Security wage base enjoy tax savings of 1.45%.

In recognition of certain employees incurring an additional 10% early withdrawal tax (“early withdrawal penalty”), Palm Beach County Board of County Commissioners (“Employer”) wishes to mitigate the effect of such early withdrawal penalty via this Early Withdrawal Offset Provision by making a payment to such Former Employees for the difference between 10% of the contribution amount and the amount of tax savings as described in the previous paragraph. This generally results in a payment of up to 2.35% (10% penalty minus 7.65% previous savings on Social Security and Medicare taxes). However, individuals who have met their FICA salary limit before separating from employment would receive an 8.55% (10% penalty minus 1.45% savings) payment for amounts over the FICA limit. Such payment will be issued as a “vendor payment” and reported on form 1099-M.

To be eligible for the Early Withdrawal Offset Provision payment, the Former Employee:

- Will not have reached at least age 55 by December 31 of the year of separation from service; OR
- In the case of a public safety employee:
 - will not have reached at least age 50 by December 31 of the year of separation from service; OR
 - will have less than 25 years of service as of the date of separation from service.

To qualify to receive the Early Withdrawal Offset Provision payment, the Former Employee must:

- Within 60 days of their separation from service, receive a taxable cash distribution from the 401(a) Special Pay Plan account; AND
- Within ten (10) days of receiving such distribution, submit application to the employer’s Human Resources Department for the Early Withdrawal Offset Provision payment.

As soon as administratively feasible after receipt in good order of the Former Employee’s application for the Early Withdrawal Offset Provision payment and W-9 with current address, the Employer will make payment to the Former Employee.

**APPENDIX TO THE
PALM BEACH COUNTY 401(a) SPECIAL PAY PLAN ("PLAN")
FOR
APPLICATION FOR EARLY WITHDRAWAL OFFSET PROVISION PAYMENT**

Today's Date

Employee Identification Number

Former Employee Last Name (Print) Former Employee First Name (Print)

Date of Termination

I have received a distribution from my PBC 401(a) Special Pay Plan account.

(initial here)

I understand that I must have requested the distribution within sixty (60) days of separation from employment in order to be eligible for the Early Withdrawal Offset Provision payment (EWOPP). I received a distribution from my PBC 401(a) Special Pay Plan account on the following date: _____

(initial here)

I am requesting the Early Withdrawal Offset Provision payment (EWOPP) and I attest that I have submitted this application to my former employer's HR department within ten (10) days of receiving a distribution from my PBC 401(a) Special Pay Plan account.

(initial here)

I have attached a signed W-9 with my current address for mailing of the Early Withdrawal Offset Provision payment (EWOPP).

(initial here)

By signing, I attest that the above is true and accurate. Former Employee's Signature: _____

Once completed, email this document to PBC Human Resources at HR-401aWithdrawal@pbc.gov for processing.

Section 1: For Human Resources' Authorization	
Separation from Employment Date: _____	
Date of EWOPP Request: _____	
1. Did the former employee request the 401(a) Special Pay Plan distribution <u>within</u> 60 days from the date of termination? (If yes, proceed. If no, stop here. Employee is <u>not</u> eligible for offset provision.)	YES <u>or</u> NO
2. Is the former employee required to pay an early withdrawal penalty due to age or years of service? (If yes, proceed. If no, stop here. Employee is <u>not</u> eligible for offset provision.)	YES <u>or</u> NO
3. Did the former employee complete this EWOPP application within ten (10) days of the vendor releasing the distribution to the employer's Human Resources Department for the Early Withdrawal Offset? (If yes, proceed. If no, stop here. Employee is <u>not</u> eligible for offset provision.)	YES <u>or</u> NO
Human Resources authorizes the Early Withdrawal Offset Provision payment to the former employee.	
Budget Line Item: _____ (Enter F/D/U from Former Employee's separation from employment Personnel Action Form.)	
Total Amount of Offset Provision: \$ _____	
*Attach Former Employee's W-9 and copy of vendor's distribution report to this EWOPP request. Email both documents to the Clerk and Comptroller at BCC-GCC@mypalmbeachclerk.com *	
_____ Signature	_____ Date
_____ Printed Name	_____ Title

**BENCOR
NATIONAL GOVERNMENT
EMPLOYEES RETIREMENT PLAN™**

Basic Plan Document 01

Effective January 1, 1994
Amended and Restated
January 1, 1997
Amended and Restated
January 1, 1998
Amended and Restated
January 1, 2005
Amended and Restated
January 1, 2006
Amended and Restated
January 1, 2007
Amended and Restated
January 1, 2011
Amended and Restated
January 1, 2017

Sponsored by

**BENCOR, Inc.
One Sarasota Tower, Suite 602
2 North Tamiami Trail
Sarasota, FL 34236**

Prepared by

**Rosenberger Law Group PLLC
33 Bloomfield Hills Parkway, Suite 230
Bloomfield Hills, MI 48304**

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IRS BASIC PLAN DOCUMENT 01

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ARTICLE 1

PREAMBLES

This plan, as set forth on this and the following pages, is sponsored by and distributed to government unit employers by BENCOR, Inc. ("BENCOR"), and is known as the BENCOR National Government Employees Retirement Plan™ ("BENCOR Plan"). The BENCOR Plan, together with the adoption agreement executed by the Employer ("Adoption Agreement"), shall constitute the Employer's retirement plan for eligible employees, shall be known by the name set forth in the Adoption Agreement, and shall be referred to herein as the "Plan."

Section 1.01 Establishment of Plan. Effective as of the original effective date provided in Part 1(g) of the Adoption Agreement, the Employer has adopted the Plan for the purpose of providing retirement benefits for eligible employees.

Section 1.02 Effective Dates. The Plan is generally effective as of the original effective date provided in Part 1(g) of the Adoption Agreement. However, if the Employer is adopting the BENCOR Plan as a means of amending and restating its existing retirement plan, the amendment and restatement is generally effective as of the date provided in Part 1(h) of the Adoption Agreement, subject to the following sections of the Plan being effective as indicated below:

Section	Subject	Effective Date
3.04(c)(7)	Rollover contribution from Simple Retirement Arrangement	Contributions after December 18, 2015
5.01	Definition of Normal Retirement Age	Plan Years beginning on and after January 1, 2015
602(f)(2)	Rollover distribution to Simple Retirement Arrangement	Distributions after December 18, 2015
7.06	Marriage and Definition of "spouse"	June 26, 2013

Section 1.03 Applicable Law. The Plan is intended to be a profit-sharing plan and to satisfy those requirements of the Internal Revenue Code of 1986, as amended ("Code"), that apply to governmental entities. Where not governed by such provisions of the Code, by related Treasury Regulations, or by other federal laws, the Plan shall be administered and construed in accordance with the applicable local law of the state within which the Employer is located. It is further intended that the Plan constitute a governmental plan as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended, and that as such, the Plan is exempt from the requirements of that statute pursuant to its Section 4(a).

Section 1.04 Defined Terms. Throughout the BENCOR Plan, various terms are used repeatedly, which terms have very specific and definite meanings when capitalized in the text. For convenience, such terms are collected and defined in Article 11. Wherever such capitalized terms appear in the BENCOR Plan or in the Adoption Agreement, they shall have the meanings specified in that article.

ARTICLE 2

ELIGIBILITY AND PARTICIPATION

Section 2.01 Eligibility. In order to be eligible to participate in the Plan, an individual must be within the eligible class of Employees described in Part 3 of the Adoption Agreement for the various types of contributions provided under the Plan. An eligible individual shall complete such enrollment forms as may be required by the Administrator. It shall be the responsibility of the Employer to certify to the Administrator the names of Employees eligible for the Plan, and no other party to the Plan shall have any responsibility with respect to such determination. If an eligible Employee is omitted in error or an ineligible Employee is included in error, correction for either such failure shall be made in accordance with those requirements of the Employee Plans Compliance Resolution System ("ERCRS") program described in Rev. Proc. 2016-51 that apply in the situation presented.

Section 2.02 Participation.

(a) **Meaning of Participation.** Participation entitles an individual to have maintained on the books and records of the Plan an Account in his/her name to which allocations may be made in accordance with Article 3. However, mere participation in the Plan does not entitle a Participant to a benefit from the Plan. A Participant will receive a benefit only if allocations are made to his/her Account over his/her period of participation pursuant to Article 3.

(b) **Commencement of Participation.** (1) An individual who was participating in the Plan prior to its amendment and restatement, if applicable, and who had not ceased participation for any reason, shall continue participating in the Plan as amended and restated. (2) An individual who as of the day prior to the Effective Date had satisfied the applicable eligibility requirements, but who was not participating in the Plan prior to such date, shall commence participation in the Plan on the Effective Date. (3) Any other individual shall commence participation in the Plan on the later of the Effective Date or the first day of his/her employment within the eligible class of Employees described in Section 2.01 of the Plan and Part 3 of the Adoption Agreement.

(c) **Termination of Participation.** Participation in the Plan shall terminate for a Participant on his/her date of termination of employment, although an Account will be maintained for him/her until that Account has been credited with any contributions earned prior to termination of employment under Article 3 and the Account balance has been fully distributed as provided by Article 6.

(d) **Resumption of Participation.** Subject to the rules in Section 7.01, an individual whose participation has terminated pursuant to paragraph (c) above shall resume participation as of his/her date of reemployment, provided he/she then is within an eligible class of Employees described in Part 3 of the Adoption Agreement.

(e) Waiver of Participation. Participation in the Plan is mandatory, and an individual who meets the requirements for participation in the Plan may not elect to waive participation.

ARTICLE 3

CONTRIBUTIONS

Section 3.01 Sources of Contributions. Depending upon the Employer's selections made in Part 4 of the Adoption Agreement, both the Employer and Employees may make contributions under the Plan. Employer contributions shall be made as provided in Sections 3.02 and 3.03, as applicable. Rollover contributions by Employees shall be made as provided in Section 3.04. No other Employer or Employee contributions are permitted or required under the Plan, and no contributions may be made by or on behalf of any individual whose employment with the Employer has terminated, except under any grace period allowed by law for the making of contributions with respect to his/her period of service with the Employer prior to termination of employment.

Section 3.02 Employer Basic Contributions.

(a) **Amount.** For each Plan Year, the Employer shall make basic contributions to an Account on behalf of each Participant who is described in Part 3(a)(i) of the Adoption Agreement in the amount specified in Part 4(a) of the Adoption Agreement. Contributions under Part 4(a)(i) shall be made on an employee salary reduction basis and are not includible in gross income of the Participant for federal income tax purposes due to their nature as employer pick-up contributions under Code Section 414(h)(2) and by satisfying the requirements of Rev. Ruls. 81-35, 81-36, 87-10 and 2006-43, namely that (1) the Employer has taken action, evidenced in writing and prospective in effect, that contributions on behalf of a specified class of employees, although designated as employee contributions, will be paid by the Employer (even if through a reduction of the employee's salary or an offset against future salary increases), and (2) no Participant shall have a cash or deferred election with respect to the designated contributions or be permitted to opt out of the pick-up. All other Employer contributions under this section shall be nonelective Employer contributions.

(b) **Payment.** Contributions made under this section that are required by Part 4(a)(i) of the Adoption Agreement shall be deducted from the Participant's salary for each pay period and paid to the Fund by the Employer in such manner, and at such times during the Plan Year, as prescribed by the Trustee, but not later than the earliest date on which such contributions reasonably can be segregated from the Employer's assets and in no event later than the 15th day of the calendar month following the calendar month in which the Participant's salary was reduced to reflect the contributions. All other Employer basic contributions specified by Part 4(a) of the Adoption Agreement shall be paid to the Fund at the time or times established by the Trustee, or at such later date as the Employer determines, but in no event later than the 15th day of the tenth calendar month following the close of the Employer's fiscal year with or within which the Plan Year ends.

(c) Reversion. In no event shall any contribution made under the Plan by the Employer, or income on any such contribution, revert to the Employer, except to the extent provided by this paragraph. All amounts paid to the Fund pursuant to this section by the Employer shall be used and applied for the exclusive benefit of Participants and their Beneficiaries; provided, that for this purpose, payment of expenses out of Plan assets shall be considered paid for such exclusive benefit. Notwithstanding the foregoing or any other provision of the Plan to the contrary, a contribution made to the Fund by the Employer may be returned to the Employer if such contribution is made by the Employer by mistake of fact, provided that the contribution is returned to the Employer within one year after payment of the contribution. Employer pick-up contributions shall be irrevocable and in no event may they revert to the Employer.

(d) Allocation. Subject to the limitations of Section 7.03, a contribution made pursuant to this section shall be allocated to the Participant's Account as of the Accounting Date immediately following the date the contribution is made, and in all cases no later than the last day of the Plan Year.

(e) Vesting. A Participant's Account attributable to contributions under this section shall be 100% nonforfeitable (subject, however, to investment gains and losses and allocable expenses).

Section 3.03 Employer Special Pay Contributions

(a) Amount. For each applicable Plan Year, the Employer shall make special pay contributions to the Plan of a Participant's accumulated sick and vacation leave as provided by Part 4(b) of the Adoption Agreement. Such special pay contributions shall be made to an Account on behalf of each Participant who is described in Part 3(a)(ii) of the Adoption Agreement in the amount specified in Part 4(b) of the Adoption Agreement. For purposes of this section and Part 4(b) of the Adoption Agreement, accumulated sick and vacation leave means paid time off work that is unused and cannot be received by the Participant, at his/her election, in the form of current cash in lieu of the time off work.

(b) Payment. The special pay contributions of the Employer, as determined under paragraph (a) above, shall be paid to the Fund no later than the 15th day of the tenth calendar month following the close of the Employer's fiscal year with or within which the Plan Year ends.

(c) Reversion. Reversion of Employer special pay contributions, or income on any such contributions, shall be subject to the same limitations as set forth in Section 3.02(c) above.

(d) Allocation. Subject to the limitations of Section 7.03 and the last sentence of this paragraph, Employer special pay contributions made under this section shall be allocated to and among the Accounts of eligible Participants (as described in Part 3(a)(ii) of the Adoption Agreement) as of the Accounting Date nearest the date each such contribution is made, and in

all cases no later than as of the last day of the Plan Year, in the manner described in Part 4(b) of the Adoption Agreement. Provided, however, that in no event will an allocation to any Participant under Part 4(b) of the Adoption Agreement exceed the sum of the Participant's accumulated sick and vacation leave pay (other than regular wages) as selected in the Adoption Agreement, for any Plan Year.

(e) Vesting. A Participant's Account attributable to special pay contributions made under this section shall be 100% nonforfeitable (subject, however, to investment gains and losses and allocable expenses).

Section 3.04 Employee Rollover Contributions.

(a) Amount. Any Employee who is a Participant, or who is eligible to become a Participant under Part 3 of the Adoption Agreement, may pay to the Fund, or arrange for the direct transfer to the Fund from another eligible retirement plan, provided that in each case the Administrator agrees, a contribution of an amount which qualifies for rollover treatment to a Code Section 401(a) qualified retirement plan under Code Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii) or 457(e)(16)(A).

(b) Payment. Except in the case of a direct rollover, an Employee's rollover contribution to the Plan must be made to the Fund not later than the 60th day after the day on which he/she received the distribution that is eligible for rollover.

(c) Limitation. An Employee may not roll over to the Plan: (1) a contribution which exceeds in value the amount received (or the proceeds of the sale of property received) in a distribution described in paragraph (a); (2) any amounts representing after-tax Employee contributions made under any other plan and in which the Employee has other than a zero income tax basis, unless the Administrator agrees to account separately for such amounts, including separately accounting for the portion of the rollover which is includible in gross income and the portion which is not so includible; (3) any amount representing a lifetime annuity payment or a periodic distribution over a period of ten years or more as described in Code Section 402(c)(4)(A); (4) any amount that is a required distribution under Code Section 401(a)(9); (5) any amount the Employee has received from a plan in his capacity as a non-spouse beneficiary of a deceased individual participant in that plan; (6) any hardship distribution described in Code Section 401(k)(2)(B)(i)(IV) or (7) a distribution from a SIMPLE Retirement Account as defined in Code Section 408(p) unless the contribution is made after December 18, 2015 and the Employee making the contribution had been participating in a salary reduction arrangement under the SIMPLE Retirement Arrangement for a period of at least two years.

(d) Reversion. Rollover contributions in no event may revert to the Employer.

(e) Allocation. A rollover contribution made by a Participant pursuant to this section shall be allocated to the Participant's Rollover Contribution Account as of the Accounting Date

immediately following the date the contribution is made. Prior to such Accounting Date, or if the Employee has not yet become a Participant under the Plan, any such contribution shall be allocated to a temporary account, and as of the next Accounting Date, or if later, as soon as the Employee does become a Participant, any such amount in this temporary account shall become a regular Rollover Contribution Account which shall be part of the Participant's Account.

(f) Vesting. A Participant's Account attributable to a rollover contribution shall be 100% nonforfeitable (subject, however, to investment gains and losses and allocable expenses).

ARTICLE 4

ADJUSTMENT OF ACCOUNTS

Section 4.01 Individual Accounts. There shall be reflected on the books and records of the Plan sufficient entries to disclose the interest of each Participant and each Beneficiary of a deceased Participant. Such entries shall be in the form of individual Accounts. However, the maintenance of these Accounts is only for accounting purposes. Similarly, the fact that individual Accounts are maintained shall not be construed to mean that any Participant or Beneficiary has title to any specific assets of the Plan. Each Account may be further divided into separate sub-accounts to receive and hold contributions having a particular characterization, as determined by the Administrator.

Section 4.02 Allocation Procedures.

(a) **Earnings, Gains, Losses and Expenses.** The earnings, gains and losses of the investments in the Fund and expenses of the Fund's investments and of the Plan, shall be determined periodically and allocated to Accounts pursuant to the procedures established by the Administrator. In no event shall such allocations be made less frequently than annually, and for purposes of each allocation, assets shall be valued at fair market value.

(b) **Contributions.** Contributions made pursuant to Article 3 shall be credited to Accounts at the time and in the manner provided by that article.

(c) **Distributions.** Distributions made pursuant to Article 6 shall be charged to Accounts in accordance with the rules of that article.

Section 4.03 Participant Statements. Periodically, as required by law, the Administrator shall prepare and provide to Participants individual statements of their Accounts showing the market value of each Account as of the most recent Accounting Date, along with contributions, distributions and adjustments since the last Accounting Date and such other information as is deemed appropriate by the Administrator.

Section 4.04 Directed Investments.

(a) **Right To Direct Investments.** Notwithstanding any other provisions of the Plan, to the extent provided in Part 5 of the Adoption Agreement, each Participant may direct, by written instruction in such form and at such time as prescribed by the Administrator, the investment of his/her Account among investments made available for directed investments pursuant to paragraph (b) below.

(b) **Available Investments.** Such directed investments shall be selected by the Participant from investments made available by the Investment Provider. Provided, however,

that no investment which would constitute a prohibited transaction under Code Section 4975 or which is a collectible shall be made available. For this purpose, a collectible includes any work of art, rug, antique, metal, gem, stamp, coin, alcoholic beverage or any other tangible personal property specified by the Secretary of the Treasury. The Administrator may, from time to time, set minimum dollar amounts that a Participant may direct in any investment or the frequency with which Participants may direct purchases and sales, or the Investment Provider may set similar restrictions to avoid unwarranted transactional costs and undue administrative burdens or to comply with applicable securities trading rules.

(c) Effects of Investment Directions.

(1) Notwithstanding any other provisions of the Plan, there shall be a separate accounting for the investments which have been directed by a Participant pursuant to this section.

(2) A Participant directing investment of his/her Account pursuant to this section shall not, to the extent of the portion of his/her Account balance affected by the direction, be entitled to any adjustment of his/her Account for earnings, gains, losses or expenses of the Fund pursuant to Section 4.02. Rather, such a Participant shall be entitled only to those earnings and investment gains or losses as are experienced by the specific investments of his/her Account (less any expense incurred by the Plan in carrying out the Participant's investment directions), plus any amount allocated to the part of his/her Account, if any, for which he/she does not direct investments.

(3) The Employer, the Trustee, the Administrator, the Investment Provider and BENCOR shall have no liability to any Participant or Beneficiary or any other person for any loss arising from an investment or sale made pursuant to a direction by a Participant.

(d) Effective Date of Investment Directions. All investment directions made pursuant to this section shall be effective on regular dates as determined by the Trustee and the Investment Provider, subject to applicable securities rules, and communicated to Participants by the Administrator, which dates may, but need not, coincide with the valuation and Accounting Dates established pursuant to the Plan.

ARTICLE 5

RETIREMENT AND OTHER TERMINATION OF EMPLOYMENT

Section 5.01 Retirement.

(a) Normal Retirement Age. Because of its status as a governmental plan as described by Code Section 414(d), the Plan is not required to specify or define a Normal Retirement Age unless a Participant may receive an in-service distribution prior to attaining age 62 under the specific Plan terms. If, however, a Normal Retirement Age is defined in Part 2(e) of the Adoption Agreement, a Participant may retire as of any date coincident with or following his/her attainment of such age. A Participant who continues to be actively employed by the Employer after reaching his/her Normal Retirement Age shall continue to be a Participant in the Plan while he/she remains so employed by the Employer, and he/she may retire on any date thereafter. Participants always are 100% vested in all contributions made under the Plan, without regard to attainment of Normal Retirement Age or any other age.

(b) Distribution. A Participant who retires under this section shall be entitled to distribution of his/her Account balance at the time and in the manner provided by Article 6.

Section 5.02 Disability.

(a) Pre-Retirement Disability. In the event of a Participant's disability prior to his/her termination of employment with the Employer, the Participant shall be considered to have taken a disability retirement as of the first day of the month following the month in which the Employer so determines the Participant's disability. Upon such disability retirement, the Participant's Account shall become payable to the Participant.

(b) Post-Retirement Disability. A Participant's disability occurring after his/her termination of employment with the Employer shall have no impact on the timing of any distributions under the Plan.

(c) Definition of Disability. Disability means a physical or mental condition of a Participant supported by medical evidence and resulting from bodily injury, disease or mental disorder which renders him/her incapable of continuing his/her usual and customary employment with the Employer and which is expected to be of indefinite duration. The Employer may require the Participant to submit to medical examinations for the purpose of verifying his/her disability. Standards for the determination of disability shall be uniformly applied to all Participants.

(d) Distribution. A Participant who becomes disabled as provided in paragraph (a) of this section shall be entitled to distribution of his/her Account balance at the time and in the manner provided by Article 6.

Section 5.03 Death.

(a) Pre-Retirement Death. In the event of a Participant's death prior to his/her termination of employment with the Employer, the entire balance of such Participant's Account shall become payable to the Participant's Beneficiary.

(b) Post-Retirement Death. In the event of a Participant's death after his/her termination of employment with the Employer, any undistributed balance of the Participant's Account shall become payable to the Participant's Beneficiary. Provided, however, that if payments to the Participant had commenced prior to his/her death in the form of an annuity, then the amount, if any, of continuing payments, the duration thereof, and the recipient of the same, shall be determined solely by the terms of the annuity contract.

(c) Designation of Beneficiary. (1) Each Participant may submit a designation of Beneficiary to the Administrator. Any such designation may be changed from time to time by the Participant by filing a new designation with the Administrator. Every Participant's designation shall specify the share to be received by each Beneficiary. A Participant's designation of Beneficiary shall be made on a form prescribed by, provided by, filed with and accepted by the Administrator. (2) If any Participant fails to designate a Beneficiary, has not properly completed a valid designation form, or if all Beneficiaries who are designated have predeceased the Participant, any balance in the Account shall be paid to the Participant's surviving spouse, or if the Participant's spouse does not survive, then to the Participant's children who survive him/her in equal shares, or if there are no surviving children and no surviving spouse, then to the Participant's estate. (3) If a Beneficiary fails to survive the Participant, that Beneficiary's share shall be divided equally between or among the remaining Beneficiaries of the same class who do survive the Participant, unless specified otherwise by the Participant in his/her Beneficiary Designation. (4) If a Beneficiary survives the Participant but fails to collect all amounts payable on behalf of the Beneficiary from the Participant's Account prior to the Beneficiary's death, the balance shall be paid to the Beneficiary's estate, unless specified otherwise by the Participant in his/her Beneficiary designation. (5) If a Beneficiary cannot provide a valid receipt because the Beneficiary is a minor, is incapacitated or for other reason, the Beneficiary's share may be paid to the Beneficiary's parent, guardian or conservator who can provide a valid receipt, and such payment shall fully discharge from the liability the Plan, the Employer, the Trustee and the Administrator. (6) In the case of any dispute or uncertainty regarding the identity or share of any Beneficiary, the Administrator, in its discretion, may require any claimant(s) and other interested party(ies) to seek a judicial determination from the probate or other court having jurisdiction over the Participant's estate.

(d) Distribution. Distribution of the Participant's Account balance to his/her Beneficiary shall be made at the time and in the manner provided by Article 6.

Section 5.04 Termination of Employment prior to Retirement, Disability or Death. A Participant who terminates employment with the Employer, and who is not entitled to a distribution under any previous section of this Article 5, shall be entitled to distribution of the balance of his/her Account, if any, at the time and in the manner provided by Article 6.

ARTICLE 6

DISTRIBUTIONS

Section 6.01 Date of Distribution. Following a Participant's retirement, disability, death or other termination of employment, distribution of benefits from such Participant's Account shall commence or be made to the Participant (or to his/her Beneficiary) as of the date elected or deemed elected under Section 6.02.

Section 6.02 Distribution Options.

(a) **Notice of Distribution Options.** The Administrator shall provide each Participant and Beneficiary who is entitled to payment under this section with notice of the available distribution options. Such notice shall be furnished in writing (or in permitted electronic form) not more than 180 days and not fewer than 30 days prior to the date of scheduled distribution, in accordance with Treasury Regulation Section 1.411(a)-11(c), and shall clearly inform the Participant (or Beneficiary) of the right to a period of at least 30 days after receiving the notice to consider the decision whether or not to elect a distribution and, if applicable, a particular distribution option. However, if the distribution is one to which Code Sections 401(a)(11) and 417 do not apply, distribution may be made or commence fewer than 30 days after the notice is given, provided that the Participant (or Beneficiary), after receiving the notice, affirmatively elects a distribution option and subject to any other applicable restrictions of the Plan.

(b) **Election.** Subject to the restrictions in paragraph (d) below, each Participant shall be entitled to elect, on a form prescribed by and filed with the Administrator (or by permitted telephonic or electronic means) within 180 days prior to the commencement of benefits, the distribution option by which his/her Account shall be distributed and the date on which payments should commence or be made. In the case of the death of a Participant, and subject to the restrictions in paragraph (d) below, the Participant's Beneficiary shall be entitled to indicate on a form prescribed by and filed with the Administrator (or by permitted telephonic or electronic means) within 180 days prior to the elected commencement of benefits, that Beneficiary's election as to the form and date of distribution of the deceased Participant's Account balance. The Administrator, upon receipt of an election filed pursuant to this section, shall direct the Trustee as to the time and manner of distribution.

(c) **Options.** Subject to paragraphs (d) and (e) below, the distribution options available to a Participant shall include (1) a current lump sum cash payment payable as soon as administratively feasible after the Participant's termination of employment, (2) a direct rollover to the extent permitted by paragraph (f) below, and (3) any additional options selected by the Employer in Part 6 of the Adoption Agreement.

(d) Restrictions. Distributions under this Article 6 shall be subject to the following rules:

(1) Time and Manner of Distribution.

(A) Required Distribution Date. Each Participant's Account balance must be distributed to him/her in full, or distribution must at least commence, no later than April 1 following the calendar year in which he/she attains age 70½ or in which he/she retires, if later ("required distribution date"). If not distributed in a lump sum, the Participant's Account must be distributed in one or more of the following ways: over the life of the Participant; over the life of the Participant and a designated beneficiary; over a period certain not extending beyond the life expectancy of the Participant; or over a period not extending beyond the joint life and last survivor expectancy of the Participant and a designated beneficiary.

(B) Death of Participant on or after Required Distribution Date. If the Participant dies on or after the required distribution date, his/her remaining Account balance must be distributed to the Participant's designated beneficiary at least as rapidly as under the method of distribution being used as of the date of the Participant's death.

(C) Death of Participant before Required Distributions Date. If the Participant dies before the required distribution date, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) For any portion of the Account for which the Participant's surviving spouse is the Participant's designated beneficiary, except as provided in paragraph (5) below, 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 70½, if later, over the lifetime of the spouse or over a period certain not extending beyond the life expectancy of the spouse.

(ii) For any portion of the Account for which the Participant's designated beneficiary is a person other than the Participant's surviving spouse, except as provided in paragraph (5) 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, over the lifetime of the beneficiary or over a period certain not extending beyond the life expectancy of the beneficiary.

(iii) For any portion of the Participant's Account for which there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, that portion of the Participant's Account will be fully distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) For any portion of the Account for which the Participant's surviving spouse is the Participant's designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this paragraph (C), other than part (i), will apply as if the surviving spouse were the Participant.

For purposes of this paragraph (C) and paragraph (4) below, unless part (iv) of this paragraph (C) applies, distributions are considered to begin on the Participant's required beginning date. If part (iv) of this paragraph (C) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under part (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 part (i), the date distributions are considered to begin is the date distributions do commence.

(D) Forms of Distribution. Unless the Participant's Account 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, distributions as of the first distribution calendar year will be made in accordance with paragraphs (2) and (3) below. If the Participant's Account is distributed in the form of an annuity purchased from an insurance company, distributions under the annuity will be made at least as rapidly as required under the tables located in Section 1.401(a)(9)-9 of the Treasury Regulations.

(2) Required Minimum Distributions during Participant's Lifetime.

(A) 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:

(i) the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2 of the Treasury Regulations, using the Participant's attained 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 Section 1.401(a)(9)-9, Q&A-3 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(B) Lifetime Required Minimum Distributions Continue through Year of Participant's Death. Required minimum distributions will be determined under this paragraph (2) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(3) Required Minimum Distributions after Participant's Death.

(A) 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:

(aa) 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.

(bb) 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.

(cc) 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 calendar 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.

(B) Death before Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. Except as provided in paragraph (4) below, 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 paragraph (A) above.

(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 Account 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 paragraph (1)(C)(i) above, this paragraph (B) will apply as if the surviving spouse were the Participant.

(4) Special Election. Participants or Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in paragraphs (1)(C)(iii) and (3)(B) above applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under paragraph (1)(C) above, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph (A), distributions will be made in accordance with paragraphs (1)(C) and (3)(B) above.

(5) Definitions.

(A) Designated beneficiary. The individual who is designated as the Beneficiary under 5.03(c) of the Plan and is the designated beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the Treasury Regulations.

(B) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under paragraph (1)(B) above. 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.

(C) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1 of the Treasury Regulations.

(D) Participant's Account balance. The Account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated to the Account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(E) Required beginning date. The date specified in Section 6.02(d)(1)(A) of the Plan and referred to in that section as the "required beginning date."

(6) Default. If no election for a time or method of distribution is made by the Participant (or by the Beneficiary in the case of a death benefit), the Administrator either may direct commencement of distributions on a date and in a manner selected by it, or direct that payments of benefits be held until an election is made under this Section 6.02, subject to the restrictions in the paragraphs above.

(e) Cash-Outs. Notwithstanding any provision of the Plan to the contrary, but subject to the direct rollover option described in paragraph (f) below, if the Account balance of a Participant does not exceed \$1,000, the Administrator shall direct the Trustee to make a non-deferred lump sum distribution to such Participant, or in the case of a Participant's death, to the Participant's surviving spouse or other properly designated Beneficiary, of the Participant's entire Account balance.

(f) Direct Rollovers. Notwithstanding any contrary provision of the Plan that otherwise would limit a Participant's distribution election under the Plan, a Participant may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid as a direct rollover to an eligible retirement plan specified by the Participant. For purposes of this paragraph (f), the following terms shall have the meanings indicated:

(1) "eligible rollover distribution" means any distribution of all or part of the balance to the credit of the Participant, except that where a direct rollover of less than the full nonforfeitable balance of the Account is elected, another

option for distribution of the remaining balance may be made. In addition, a Participant (or Beneficiary) may elect the direct rollover option only if his/her nonforfeitable Account balance equals or exceeds \$200 and may elect a partial direct rollover only if the amount to be rolled over is at least \$500. A distribution will not be an "eligible rollover distribution" if it is described by any of the following: (A) one of a series of substantially equal periodic payments (made not less frequently than annually) for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and his/her Beneficiary, or for a specified period of ten years or more; (B) a required minimum distribution under paragraph (d) above; (C) not includible in the Participant's gross income for federal income tax purposes, except that a distribution from the Plan of any after-tax amounts also shall qualify as an eligible rollover distribution, but only if made to an individual retirement account described in Code Section 408(a), individual retirement annuity described in Section 408(b) or a trust qualified under Code Section 401(a) which is part of a defined contribution plan that agrees to account separately for such amounts; or (D) a hardship distribution.

(2) "eligible retirement plan" means: (A) an individual retirement account described in Code Section 408(a); (B) an individual retirement annuity described in Code Section 408(b); (C) a qualified plan described in Code Section 401(a); (D) an annuity plan described in Code Section 403(a); (E) an annuity contract described in Code Section 403(b); (F) an eligible plan described in Code Section 457(b) which is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state, which plan agrees to account separately for amounts transferred into it from this Plan; (G) for distributions made after December 31, 2007, a Roth IRA as described in Code Section 408A, provided that for distributions made prior to January 1, 2010, the Participant does not have modified adjusted gross income exceeding \$100,000 and, if married, does not file a separate federal income tax return from his spouse. In each case, the plan must be one that, by its terms, will accept an eligible rollover distribution as a direct rollover; and (G) for distributions made after December 18, 2015, a simple retirement arrangement defined in Code Section 408(p).

(3) "direct rollover" means a payment by the Plan to the eligible retirement plan specified by the Participant.

The Plan shall not be required to withhold any federal income tax from an eligible rollover distribution that is paid as a direct rollover to an eligible retirement plan, even though, in the case of a direct rollover to a Roth IRA, the distribution is a taxable distribution. The direct rollover option is available with respect to a distribution meeting the foregoing requirements payable to: (i) a Participant; (ii) a Beneficiary who is the Participant's surviving spouse or a Participant's former spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p); or (iii) a Beneficiary

who is not the surviving spouse of the Participant. For purposes of a direct rollover by a Beneficiary described in (iii), however, the direct rollover distribution may be made only to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b), in either case which is designated an "inherited account" within the meaning of Code Section 408(d)(3)(C), the distribution is not subject to the direct rollover requirements of Code Section 401(a)(31), the notice requirements of Code Section 402(f) or the mandatory withholding requirements of Code Section 3405(c). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover. If the Beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a "designated beneficiary" within the meaning of Code Section 401(a)(9)(E).

Section 6.03 Valuation of Accounts and Subsequent Distributions.

(a) Valuation of Account. Following the date of a Participant's retirement, disability, death or other termination of employment, the Administrator shall direct one or more valuations for purposes of determining the value of the Participant's Account. For purposes of distribution, a valuation shall be made as of the Accounting Date immediately preceding the date scheduled for distribution of the Account. A Participant's Account shall not share in any allocation of earnings, gains, losses and expenses after the date on which it is valued in accordance with this paragraph (a) for distribution in a lump sum, nor shall the Participant be entitled to any interest or other credit between the date of valuation and the date of distribution.

(b) Subsequent Distributions. In the case of a Participant who, pursuant to Article 3, is entitled to any allocations of contributions to his/her Account for the Plan Year in which he/she leaves employment, the Trustee, at the direction of the Administrator, either shall delay the distribution until such time as all final allocations have been determined and made, or shall make a separate distribution to the Participant (or to his/her Beneficiary in the case of death) of the amount finally allocated to the Participant's Account for the Plan Year. Any separate distribution shall be made in a single payment as soon as practical, as determined by the Administrator and communicated to the Trustee, after the final allocation.

Section 6.04 In-Service Distributions. No distribution from the Plan shall be made to a Participant (or any Participant's Beneficiary) prior to the Participant's retirement, death, disability or other termination of employment with the Employer. Provided, however, that if the Employer has so elected in Part 6(vi) of the Adoption Agreement, a Participant may make an in-service election to transfer money from his/her Account to any state retirement system in which he/she participates, and which is a qualified plan under Code Section 401(a), in order to purchase additional service credit under the provisions of the transferee plan and in accordance with applicable state law.

Such transfer shall be made by written request to the Administrator, on a form prescribed and provided by the Administrator. The Administrator shall direct the Trustee to withdraw the amount requested from the Participant's Account and transfer it directly to the transferee plan, in accordance with the Participant's written instructions.

Section 6.05 Loans to Participants.

(a) General Rules. To the extent provided in Part 7 of the Adoption Agreement, a Participant may borrow from his/her Account. Application by a Participant to borrow money from his/her Account shall be made by written request to the Administrator, on a form prescribed and provided by the Administrator. Provided that the loan application is properly completed and that the Participant otherwise qualifies for a loan under the provisions of this section, the Administrator shall direct the Trustee to withdraw from the Participant's Account and disburse to the Participant by check the lesser of the amount requested or the amount available under the provisions of this section and Part 7 of the Adoption Agreement, but only upon the following terms and conditions:

(1) the loan shall be evidenced by a promissory note, in a form prescribed by the Administrator, that shall be signed by the Participant;

(2) the loan shall be for a principal amount which, when added to the outstanding balance of any other loan or loans of the Participant from the Plan and from any other tax-qualified retirement plan of the Employer (including plans of other employers required to be aggregated with this Plan pursuant to Code Section 414(b), (c), or (m)) does not exceed the lesser of (A) \$50,000, reduced by the excess (if any) of the highest outstanding balance of the Participant's plan loans during the one-year period ending on the day before the date on which the loan is to be made, over the outstanding balance of plan loans on the date on which such loan is to be made, or (B) 50% of the Participant's nonforfeitable Account balance;

(3) the loan shall bear a reasonable rate of interest, comparable to that being charged by local financial institutions on loans of a similar character on the date of application for the loan;

(4) the loan shall be for a prescribed term of no longer than five years, with no penalty for prepayment;

(5) the loan shall provide for specific terms of repayment, in substantially equal installments of principal and interest, made at least quarterly, which terms the Administrator may request the Employer to implement by

appropriate withholding from the Participant's regular salary or wages to the extent permitted by law;

(6) the loan shall be secured, notwithstanding any other provision of the Plan to the contrary, by a pledge of up to 50% of the Participant's nonforfeitable Account balance as of the date of the loan;

(7) the loan proceeds need not be disbursed to the Participant by the Administrator prior to the expiration of 30 days from the end of the calendar month following the date of receipt by the Administrator of the Participant's loan application; and

(8) the loan shall be subject to the availability of cash in the Fund for making loans, the ability of the Trustee to liquidate prior investments directed by the Participant for his/her Account, and all costs of liquidating such Account to cash for purposes of making the loan.

(b) Other Rules. All loans under the Plan shall be made strictly in accordance with the provisions of this section and any additional rules which may be set forth by the Administrator. Loans shall be available to all Participants on a reasonably equitable basis in a uniform and nondiscriminatory manner, although the Administrator may make distinctions on the basis of credit worthiness of the Participant, the liquidity of the Participant's Account and of the Fund at the time of receipt of the Participant's loan application, and such other factors as the Administrator deems relevant in protecting the interests of all Participants in the Fund.

(c) Treatment of Loans and Repayments. For purposes of the allocation of earnings, gains, losses and expenses of the Fund and the determination of the balance of a Participant's Account on any Accounting Date under Article 4, a loan under this section shall be treated as a nontaxable withdrawal from the Participant's Account, on the date the loan proceeds are disbursed, to the extent of the principal amount borrowed, and each payment on the loan shall be treated as an addition to the Account, on the date received, to the extent such payment constitutes repaid principal. Interest paid by a Participant on any loan shall be credited directly to the Account of that Participant.

(d) Default. In the event of a Participant's default in payment of a loan made in accordance with this section, the Employer shall, upon the direction of the Administrator, to the extent and at the time permitted by law, deduct the amount of loan that is in default (and any unpaid interest due) from the Participant's regular salary or wages (including any bonus or other payments) and pay such deducted amount to the Trustee. In addition, the Administrator may direct the Trustee to take any other action which may be necessary or appropriate to permit the Administrator to enforce collection of the unpaid loan. Upon the occurrence of any event permitting a distribution from the

Plan, any balance of the loan which remains unpaid (including any unpaid interest due) shall be recharacterized as a distribution and reported by the Trustee as taxable income to the Participant. For purposes of this paragraph, a loan shall be deemed to be in default upon the Participant's failure to timely make any scheduled repayment of principal or interest and expiration of any reasonable grace period that may be permitted by the Administrator and allowed by law. The Trustee, at the direction of the Administrator, shall report the amount of any defaulted loan as a taxable distribution to the Participant at the time and to the extent required by law.

(e) Suspension of Repayment Obligations during Military Service. In accordance with Code Section 414(u)(4), a Participant's obligation to repay any loan made under this section shall be suspended for any period during which such Participant is performing service in the uniformed services, whether or not qualified military service, and such suspension shall not be taken into account for purposes of Code Section 72(p), 401(a) or 4975(d)(1). Terms used herein relating to military service are defined in Section 7.05.

Section 6.06 Distribution to Alternate Payees.

(a) General Rule. If a qualified domestic relations order ("QDRO") is issued with respect to a Participant, any alternate payee who is designated in the QDRO may elect to receive the portion of the Participant's Account awarded to him/her under the QDRO in an immediate single lump sum payment. If the alternate payee elects such option, payment shall be made as soon as administratively feasible after the Administrator has approved the QDRO, even though the Participant may not be entitled to a concurrent Plan distribution under the provisions of Article 6. If the alternate payee does not elect the immediate payment option, the benefit awarded to him/her under the QDRO shall be paid to the alternate payee when the Participant reaches his/her earliest retirement age or when the Participant otherwise first becomes entitled to a distribution under the terms of the Plan. Notwithstanding the preceding sentence, if the portion of the Participant's Account awarded to the alternate payee has a present value of \$1,000 or less, payment to the alternate payee automatically shall be made in an immediate lump sum payment.

(b) Special Definitions. For purposes of this section, the following terms shall have the meanings indicated:

(1) "qualified domestic relations order" means a domestic relations order which--

(A) creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion

of the Account balance payable with respect to a Participant under the Plan;

(B) clearly specifies--

(i) the name and the last known mailing address (if any) of the Participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the Participant's Account to be paid by the Plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies; and

(C) does not require --

(i) the Plan to provide any type or form of benefit, or any option, not otherwise provided under the Plan,

(ii) the Plan to provide increased benefits (determined based on actuarial value), and

(iii) the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(2) "domestic relations order" means any judgment, decree or order (including approval of a property settlement agreement) which relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of a Participant, and is made pursuant to a state domestic relations law (including a community property law).

(3) "earliest retirement age" means the earlier of --

(A) the date on which the Participant is entitled to a distribution under the Plan, or

(B) the later of --

(i) the date the Participant attains age 50, or

(ii) the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant separated from service.

(4) “alternate payee” means any spouse, former spouse, child or other dependent of a Participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the Account balance payable under the Plan with respect to such Participant.

(c) Revised or Post-Mortem Orders. A domestic relations order that otherwise satisfies the requirements for a QDRO specified above will not fail to be a QDRO solely because either (1) the order is issued after, or revises, another domestic relations order or QDRO, or (2) the order is issued after the Participant’s death. A domestic relations order described in this paragraph (c) is subject to the same requirements and protections that apply to QDROs generally.

ARTICLE 7

SPECIAL PROVISIONS

Section 7.01 Service Rules.

(a) General Rule. An Employee generally shall be entitled to service credit with the Employer, determined to the nearest month, from his/her date of hire to his/her date of retirement, death, disability or other termination of employment. For purposes hereof, 12 months of service shall be equal to one Year of Service, and any service less than 12 months shall be ignored.

(b) Break in Service. A Break in Service shall occur when an Employee is absent from employment for any continuous period of 12 months or longer for reasons other than service in the armed forces of the United States or other leave which is specifically approved by the Employer.

(c) Other Service Counted. An Employee's service also shall include any period during which such Employee:

(1) was a leased employee (as defined in Code Section 414(n)(2)) who performed services for the Employer, to the extent provided by Code Section 414(n) and the related Treasury Regulations;

(2) was employed by a predecessor employer of the Employer, the plan of which predecessor is the Plan maintained by the Employer; and

(3) was employed by a predecessor employer of the Employer, even though the Plan is not the plan maintained by the predecessor employer, but only if service with such predecessor employer would be required to be included in the individual's service by any regulations that may be issued under Code Section 414(a)(2).

(d) Effects of Separation from Employment.

(1) Participation.

(A) An Employee who separates from employment, but who returns before incurring a Break in Service, shall not have his/her eligibility for continued participation affected, or if he/she has not satisfied the Plan's eligibility requirements as of his/her date of separation, the determination of when he/she has satisfied such requirements and the date on which he/she is to commence participation shall not be affected.

(B) If an Employee who incurs a Break in Service was not a Participant in the Plan prior to the break, or if his/her participation in the Plan has terminated pursuant to Article 2, participation shall commence or resume, as the case may be, on the date that the Employee is first reemployed following the Break in Service, provided that the Employee then meets the eligibility requirements set forth in Part 3 of the Adoption Agreement; otherwise, participation shall commence or resume, as the case may be, as if the individual were a new Employee.

(2) Years of Service. An Employee shall not lose service credit on account of any Break in Service.

Section 7.02 Transfers. If provided in Part 3 of the Adoption Agreement, certain Employees may be excluded from participation in the Plan. However, an Employee who is transferred or changes to covered employment may become a Participant, provided that the Employee meets the other requirements for participation under Part 3 of the Adoption Agreement. Participation shall commence as of the later of the date of transfer or the date specified in Section 2.02 after the Employee meets any other requirements for participation specified in Part 3 of the Adoption Agreement. In no event, however, shall the Employee's Compensation while employed on other than a basis covered by the Plan be used in determining any of his/her allocations under Article 3. In the case of a change or transfer of a Participant to non-covered employment, his/her Account shall be valued and frozen (except for allocation of subsequent earnings, gains, losses and expenses) as of the last day of the Plan Year in which his/her employment status changes, but he/she shall not be entitled to any distribution of his/her Account under Article 6 until his/her date of retirement, disability, death or other termination of employment with the Employer, after which date distribution may be made in accordance with the provisions of the Plan as they otherwise would apply to an Employee or his/her Beneficiary.

Section 7.03 Limitations on Annual Allocations to Accounts.

(a) Single Plan. Notwithstanding any provision of the Plan to the contrary and except as provided by Code Section 414(v), if applicable, the total additions made to the Account of any Participant in any limitation year shall not exceed the lesser of:

- (1) \$54,000; or
- (2) 100 percent of the Participant's compensation for such limitation year;

except that such \$54,000 limitation shall be adjusted automatically after 2017, without the necessity of a specific Plan amendment, whenever the Secretary of the Treasury

increases this dollar limitation to reflect cost-of-living adjustments in accordance with Code Section 415(d) and the related Treasury Regulations, effective for the limitation year ending with or within the calendar year for which the adjustment is made by the Secretary.

(b) Special Definitions. For purposes of this section and without regard to any election of the Employer in the Adoption Agreement, the following terms have the meanings indicated:

(1) “total additions” means, with respect to each limitation year, the sum of:

- (A) Employer contributions;
- (B) Forfeitures (if any), allocated to the Participant’s Account;
- (C) The Participant’s employee contributions, if any; and

(D) For purposes of applying the applicable dollar limitation in paragraph (a)(1) of this section only, the following amounts shall be treated as annual additions to a defined contribution plan of the Employer -- amounts allocated to an individual medical account, as defined in Code Section 415(1)(2), which is part of any pension or annuity plan maintained by the Employer, and amounts derived from contributions which are attributable to postretirement medical benefits allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer.

Provided, however, total additions shall not include:

(E) Any restorative payment, which is a payment made to restore losses to the 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, and 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 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). Such payments include payments to the Plan made pursuant to a court-approved settlement, to restore losses to Plan on account of the 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 total additions;

(F) A direct transfer of a benefit or employee contributions from a qualified plan to this Plan;

(G) Rollover contributions (as described in Code Sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3) and 457(e)(16));

(H) Repayments of loans made to the Plan by a Participant; and

(I) Repayments of amounts described in Code Section 411(a)(7)(B) (in accordance with Code Sections 411(a)(7)(C) and 411(a)(3)(D), as well as Employer restorations of benefits that are required pursuant to such repayments.

(2) "limitation year" means the Plan Year.

(3) "compensation" means, with respect to each limitation year, an Employee's wages as defined in Code Section 3121(a) but without regard to the limitation imposed by Code Section 3121(a)(1). Provided, however, that compensation shall be increased for any year by the following types of compensation paid after a Participant's severance from service with the Employer (or any other entity that is treated as the Employer pursuant to Code Section 414(b), (c), (m) or (o)), but only to the extent such amounts are paid by the later of 2½ months after the Participant's severance from service or by the end of the year that includes the date of such severance from service:

(A) Regular pay after severance of service if 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 the payment would have been paid to the Participant prior to a severance from service if the Participant had continued in service with the Employer;

(B) 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 service, and the amounts are payment 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; and

(C) Deferred compensation if it would have been included in the definition of compensation had it been paid prior to the Participant's severance from service, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is currently includible in the Participant's gross income.

Notwithstanding the foregoing, compensation *shall not include*:

(D) 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 Section 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;

(E) Amounts paid to a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3));

(F) Amounts earned but not paid during the year solely because of the timing of pay periods and pay dates; and

(G) Any amount for the year in excess of \$270,000 (or such other cost-of-living adjusted amount as is set by the Secretary of Treasury in accordance with Code Section 401(a)(17)(B) for years beginning after 2017); for any period of less than 12 months, the annual limit of this part (G) shall be an amount equal to the limit for the calendar year in which the period begins multiplied by the ratio obtained by dividing the number of full months in the short period by 12.

Any other payment of compensation paid after severance from service that is not described in parts (A) to (C) above is not considered compensation, even if payment is made within the foregoing time period.

(4) "Employee contributions" means after-tax amounts contributed to the Plan by the Participant, if any.

(5) "Employer contributions" means any contributions to the Plan by the Employer pursuant to Sections 3.02 and 3.03, including any pre-tax Employee contributions that are made to the Plan pursuant to Section 3.02 but which are treated as employer pick-up contributions under Code Section 414(h).

(c) Aggregation. In applying the limitations of this section, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a predecessor employer) and under which the Participant receives total additions are treated as one defined contribution plan. For purposes of this section, the "Employer" includes not only the Employer that adopts this Plan but also all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code Section 414(b), (c), (m) or (o)), except that for purposes hereof the determination shall be made by applying Code Section 415(h), and shall take into account tax-exempt organizations under Treasury Regulation Section 1.414(c)-5, as modified by Treasury Regulation Section 1.415(a)-1(f)(l). 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 Treasury Regulation Section 1.415(f)-1(b)(2) apply as if the Employer and predecessor Employer constituted a single employer under the rules described in Treasury Regulation Sections 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 Treasury Regulation Sections 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event giving rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship. 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. For purposes of aggregating plans for Code Section 415, a "formerly affiliated plan" of the Employer is taken into account for purposes of applying the limitations of this section, but the formerly affiliated plan is treated as if it had terminated immediately prior to the "cessation of affiliation." A "formerly affiliated plan" of the 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 Treasury Regulation Sections 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 Treasury Regulation Sections 1.415(a)-1(f)(1) and (2)). A "cessation of affiliation" means the event that causes an entity no longer to be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Treasury Regulation Sections 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan not actually to be maintained by any of the entities that constitutes the Employer under the employer affiliation rules of Treasury Regulation Sections 1.415(a)-1(f)(l) and (2) (such as a transfer of plan sponsorship outside of a controlled group). Two or more defined contribution plans that are not required to be aggregated pursuant to Code Section 415(f) and the related final regulations as of the first day of a limitation year do not fail to satisfy the requirements of Code Section 415 with respect to a Participant for the limitation year merely because they are aggregated later in that limitation year, provided that no total additions are credited to the Participant's Account after the date on which the plans are required to be aggregated.

(d) Employee Leasing. In the event the Employer is provided with services by leased employees (within the meaning of Code Section 414(n) and Section 7.04), then for purposes of this section, the leased employees shall be treated as Participants in the Plan and contributions or benefits provided by the leasing organization which are attributable to services performed for the Employer shall be treated as provided by the Employer as permitted under Code Section 414 and related regulations.

(e) Excess Total Additions. If the total additions are exceeded for any Participant, then the Plan may correct such excess only in accordance with the Employee Plans Compliance Resolution System ("EPCRS") as set forth in Rev. Proc. -2016-51 or any superseding guidance, including, but not limited to, the preamble of the final Treasury Regulations under Code Section 415.

(f) Notice to Participants. The Administrator shall advise affected Participants of any adjustments to their Accounts required by the limitations under this section.

Section 7.04 Leased Employees.

(a) General Rule. Although any leased employee of the Employer generally shall be excluded from participation in the Plan and shall not be entitled be allocated any contributions under the Plan, the leased employee shall be counted as an Employee for the purposes required by Code Section 414(n).

(b) Exception. If by reason of counting such leased employee as an Employee for purposes required by Code Section 414(n), and after taking into account contributions and benefits provided by the leasing organization as described in this paragraph, the Plan fails to meet the requirements of Code Section 401(a), then the leased employee will be eligible to participate in the Plan as if he/she were an Employee. In such event, Years of Service for purposes of the Plan for the leased employee will be calculated in accordance with the rules set forth in Code Section 414 and related Treasury Regulations. In all events, for purposes of this section, contributions to or benefits provided by any qualified plan maintained by the leasing organization which are attributable to services performed for the Employer shall be treated as provided by the Employer.

(c) Exception to the Exception. Notwithstanding paragraph (b) of this section, any leased employee will not be eligible to participate in the Plan and will be treated under the general rule in paragraph (a) if such employee is covered by a pension plan maintained by the leasing organization that meets the requirements of this paragraph and all leased employees constitute 20 percent or less of the Employer's non-highly compensated work force. A pension plan meets the requirements of this paragraph if it is a money purchase pension plan providing (1) a nonintegrated employer contribution rate of at least 10 percent of compensation, (2) full and immediate vesting and (3)

immediate participation for each employee of the leasing organization (other than employees who perform substantially all of their services for the leasing organization and individuals whose compensation from the leasing organization during the plan year and the three immediately preceding plan years is less than \$1,000 per year).

(d) Recordkeeping Relief. If the Employer does not maintain any top-heavy plans within the meaning of Code Section 416(g) and uses the services of leased employees only for an insignificant percentage of its total workload, then the Employer shall be exempt from the employee leasing recordkeeping requirements in accordance with applicable Treasury Regulations.

(e) Multiple Employers. In the event that the Employer is a member of a group of employers constituting (1) a controlled group of corporations (within the meaning of Code Section 414(b)), (2) trades or businesses, whether or not incorporated, under common control (within the meaning of Code Section 414(c)), (3) an affiliated service group (as defined in Code Section 414(m)), or (4) any other group of entities required to be aggregated as prescribed by regulations under Code Section 414(o), then the rules of this section shall be applied by treating all leased employees of such other employers as leased employees of the Employer.

(f) Special Definitions. For purposes of this section, the following terms have the meanings indicated:

(1) "compensation" means the compensation of the leased employee from the leasing organization for the entire year, as described in Code Section 415(d)(3) and the related regulations, except that such term shall include amounts excluded from gross income under Code Section 402(e)(3) or 402(h)(1)(B), amounts which could have been received in cash but for an election under a Code Section 125 cafeteria plan and amounts contributed to a Code Section 403(b) annuity contract pursuant to a salary reduction agreement within the meaning of Code Section 3121(a)(5)(D).

(2) "leased employee" means any person (other than an Employee) who has performed services for the Employer (or for the Employer and related entities determined in accordance with Code Section 414(n)(6)(A)) on a substantially full time basis for a period of at least one year pursuant to an agreement between the Employer and a leasing organization and such services are performed under the primary direction or control of the Employer.

(3) "leasing organization" means a person or other entity, other than the Employer, providing leased employees by agreement with the Employer.

(4) “non-highly compensated work force” means the aggregate number of individuals who are not highly compensated employees of the Employer (determined in accordance with Code Section 414(q)) and who either are (A) employees of the Employer (without regard to paragraph (a) of this section) having performed services for the Employer (or for the Employer and related entities determined in accordance with Code Section 414(n)(6)(A)) on a substantially full time basis for a period of at least one year or (B) leased employees.

Section 7.05 Impact of Qualified Military Service.

(a) In General. The provisions of this section shall supersede any contrary provisions of the Plan. With respect to Participants who leave employment with the Employer for qualified military service, the Plan shall comply with –

(1) The minimum requirements applicable to defined contribution retirement plans prescribed by:

(A) The Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”), effective on and after January 1, 1994, as set forth in paragraph (b) of this section; and

(B) The Heroes Earnings Assistance and Relief Tax Act of 2008 (“HEART Act”), including related guidance contained in IRS Notice 2010-15, generally effective January 1, 2007, as set forth in paragraph (c) of this section; and

(2) The permissive provisions of USERRA and the HEART Act that are described in paragraph (d) of this section.

(b) Mandatory USERRA Provisions.

(1) No Break in Service. For purposes of Section 7.01, a Participant who incurs a Break in Service because of a period of qualified military service but who has reemployment rights under USERRA, and who returns to employment with the Employer within such time as required by those rights, shall be treated for purposes of the Plan as not having incurred a Break in Service by reason of such Participant’s period of qualified military service.

(2) Service for Vesting. Each period of qualified military service served by a Participant, upon the Participant’s reemployment by the Employer pursuant to USERRA, shall be counted in the determination of the Participant’s Years of

Service with the Employer for the purpose of determining the Participant's nonforfeitable right to the balance of his/her Account under the Plan.

(3) Treatment of Certain Contributions. If any contribution is made by the Employer with respect to a Participant and if such contribution is required by reason of such Participant's rights under USERRA resulting from qualified military service, then:

(A) Such contribution shall not be subject to any otherwise applicable limitations contained in Code Section 404(a) or 415 and shall not be taken into account in applying such limitations to other contributions or benefits under the Plan or any other plan with respect to the year in which the contribution is made, but instead such contribution shall be subject to the foregoing limitations with respect to the year to which the contribution relates (in accordance with rules prescribed by the Secretary of Treasury); and

(B) The Plan shall not be treated as failing to meet the requirements of Code Section 401(a)(26) or 410(b) by reason of the making of (or the right to make) such contribution.

(4) Certain Retroactive Adjustments Not Required. Notwithstanding part (3) of this paragraph, no provision of USERRA shall be construed as requiring either any crediting of earnings to a Participant's Account with respect to any contribution before such contribution is made, or any allocation of a forfeiture with respect to the period of qualified military service.

(5) Benefits for Survivors. In the case of a Participant who dies while performing qualified military service as defined in this section, the survivors of the Participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Participant resumed and then terminated employment on account of death.

(c) Mandatory HEART Act Provisions.

(1) Death during Qualified Military Service. A Participant who is on leave from employment for qualified military service and who has reemployment rights under USERRA, but who dies during qualified military service, shall be considered as having returned to employment the day prior to his/her date of death for purposes of determining the nonforfeitable rights in his/her Account, and the Participant's entire Account balance will be considered fully vested, even if the Participant had not previously earned sufficient Years of Service under the Plan to become fully vested.

(2) Deemed Severance from Employment. A Participant's period of uniformed service that exceeds 30 days will be deemed to be a severance from service, thereby permitting a Plan distribution of his/her Account attributable to Employer contributions that otherwise is contingent on an actual severance event.

(d) Permissive Provisions. Differential pay shall be paid to a Participant who is on leave performing services in the uniformed service as provided by the employment policies of the Employer. Differential pay paid by the Employer to Participants who are on leave for qualified military service shall be treated as "compensation" for all purposes under the Plan.

(e) Definitions. For purposes of this section, the following terms shall have the meanings indicated:

(1) "compensation" means compensation, as specifically defined for each separate purpose under the Plan but increased by the amount of differential pay paid to the Participant by the Employer.

(2) "differential pay" means the difference between (A) the compensation that a Participant would have received during a given period if he/she were not in qualified military service, determined on the basis of the rate of pay he/she would have received from the Employer but for his/her absence during the period of qualified military service, or if the compensation the Participant would have received during such period is not reasonably certain, the Participant's average compensation from the Employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service), and (B) the amount the individual actually receives from the government as military pay during services in the uniformed services for a period of more than 30 days.

(3) "reemployment rights under USERRA" means the right of an individual, who is on leave from employment with the Employer for the purpose of service in the uniformed services, to be reemployed by the Employer following completion of such service, as guaranteed by USERRA.

(4) "qualified military service" means service in the uniformed services by an individual if the individual has reemployment rights under USERRA.

(5) "service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in the uniformed services, including active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which an individual is absent from his

position of employment for the purpose of an examination to determine the individual's fitness to perform any such duty, and a period for which an individual is absent from employment for the purpose of performing funeral honors duty as authorized by USERRA.

(6) "uniformed services" means the U.S. Armed Services, the Army National Guard or the Air National Guard, the commissioned corps of the Public Health Service and any other category designated by the United States President in time of war or national emergency.

Section 7.06 Marriage. For purposes of the Plan, the "spouse" of a Participant means the individual to whom the Participant has been and is lawfully married in a state that recognizes the marriage, even if the law of the state in which the Participant and spouse currently are domiciled does not recognize the validity of the marriage due to the fact that the Participant and spouse are of the same sex.

ARTICLE 8

**PROVISIONS RELATING TO FUNDING,
PLAN ADMINISTRATION AND FIDUCIARIES**

Section 8.01 Establishment and Maintenance of Fund. Upon the adoption of the Plan by the Employer, there shall be established a Fund, in the form of a trust fund with the Trustee. All contributions shall be paid to the Fund. The Fund shall be invested in such investments as are permissible under applicable law. Except as required under the Code, the benefits of the Plan shall be only such as can be provided by the assets of the Fund, and there shall be no liability or obligation on the part of the Employer, other than as provided in the Adoption Agreement, to make any contributions or payments to establish or maintain the Plan, whether in the event of termination of the Plan or otherwise. No liability for the payment of benefits under the Plan shall be imposed on the Employer or on the officers or employees of the Employer.

Section 8.02 General Assignment of Responsibilities. Except as provided more specifically by other provisions of the BENCOR Plan, the following shall be the assigned responsibilities of each party indicated:

(a) **BENCOR.** BENCOR is the sponsor of the BENCOR Plan and, as such, is responsible for maintaining and updating this Basic Plan Document 01 and the Adoption Agreement to comply with the provisions of applicable law specified in Section 1.03 and for keeping current its Pre-approved Plan Opinion Letter from the Internal Revenue Service. It shall be the responsibility of BENCOR to assist the Employer in implementation of the Plan and respond to Employer inquiries concerning general operation of the Plan. BENCOR shall select the Administrator, the Trustee and the Investment Provider, and may change any such selection from time to time by providing notice to the Employer.

(b) **Investment Provider.** The Investment Provider, which shall be selected by BENCOR, is responsible for the management and investment of that portion of the Fund assigned to it through use of various investment accounts and products offered by the Investment Provider and selected by the Employer, or in the case of Participant directed Accounts, by Participants.

(c) **Trustee.** The Trustee, which shall be selected by BENCOR, shall receive all contributions made under the Plan and deposit those contributions in the Fund. The Trustee shall invest the principal and earnings of the Fund among a money market or similar fund established and maintained by it and various investment products offered and managed by the Investment Provider and selected by the Employer, or in the case of Participant directed Accounts, by Participants. The Trustee shall prepare and render an accounting of the Fund as of the last day of each Plan Year and may render such interim accountings as appropriate. The Trustee shall not be required to render accounts to

individual Participants but only to the Administrator, which may submit such reports of the Fund to the Employer and to Participants from time to time. The Trustee also shall process and make all distributions to Participants and Beneficiaries in accordance with proper instructions from the Administrator and the Employer and shall pay expenses of the Fund and of the Plan and any applicable taxes from assets of the Fund, pursuant to established procedures, unless the expenses or taxes are paid directly by the Employer by specific prearrangement.

(d) Administrator. The Administrator, which shall be selected by BENCOR, shall assist the Employer in completion of the Adoption Agreement and, upon the Employer's request, shall obtain for the Employer a determination from the Internal Revenue Service on the tax-qualified status of the Plan, if applicable. The Administrator shall be responsible for the preparation of periodic accountings with respect to the Plan, including the allocation of contributions to the Fund and earnings on Fund investments, and for the maintenance of individual Account records for each Participant. Pursuant to that responsibility, the Administrator shall render a financial report of the Fund to the Employer at least annually and shall provide to the Employer individual statements of account for each Participant as of the close of each Plan Year or more frequently as required by law. In consultation with the Employer, the Administrator also shall provide direction to the Trustee for payment of all Plan benefits. The Administrator shall complete and file annual reports for the Plan with the Internal Revenue Service, if required by law, and shall report for tax purposes all distributions from the Plan to appropriate state, federal and local taxing authorities, and to Participants and Beneficiaries, if required by applicable law.

(e) Employer. The Employer shall sign the Adoption Agreement and such other documents and forms as are necessary or appropriate to implement the Plan and may seek any additional approval of the Plan's tax-qualified status from the Internal Revenue Service, if desired, beyond that allowing the Employer reliance on BENCOR's pre-approval. The Employer shall make all determinations of Employees who are eligible for participation in the Plan under the eligibility requirements selected by the Employer in the Adoption Agreement and as specified by the Plan and shall be responsible for communicating from time to time the names and other relevant information with respect to such eligible Employees to the Administrator. The Employer shall be responsible for remitting to the Trustee on a timely basis all contributions due under the Plan.

Section 8.03 Resignation or Removal of Administrator, Trustee or Investment Provider. The provisions of this section shall be subject to any overriding contractual requirements by or among the parties. The Administrator, the Trustee or the Investment Provider may resign by delivering a written resignation to BENCOR; such resignation shall take effect on the date provided therein, but not before the sixtieth day after a successor shall have been selected by BENCOR and shall have accepted its appointment, unless BENCOR waives such sixty-day period. The Administrator, the Trustee or Investment

Provider may be removed by BENCOR at any time, upon written notice to the party being removed; such notice of removal shall be effective on the date specified therein, but not before the sixtieth day after delivery to the removed party, unless such notice period is waived by the removed party.

Section 8.04 Expenses. The reasonable expenses relating to the Plan (including such compensation for the Plan's service providers as may be agreed to in writing from time to time by the Employer) shall be paid by and deducted from the assets of the Plan.

Section 8.05 Special Limitations. Notwithstanding other provisions of the BENCOR Plan, the following provisions shall govern the relationship between the Investment Provider and the Trustee and Administrator, Employees, Participants and Beneficiaries:

(a) The Investment Provider shall not be deemed to be a party to the Plan for any purpose other than as expressly provided by the terms hereof, nor shall the Investment Provider be responsible for the Plan's validity.

(b) The Investment Provider shall not be considered a fiduciary with respect to the Plan.

(c) The Investment Provider shall not be required to question any action of the Employer or Administrator or, where applicable, the Trustee; nor shall the Investment Provider be responsible to see that any such action is authorized by the terms of the Plan.

(d) The Investment Provider may rely on any instrument executed by the Employer, Administrator, Trustee, Employee, Participant or Beneficiary as conclusive evidence of any of the matters mentioned in the Plan with respect to which they may act, and the Investment Provider shall be fully protected in taking, permitting or omitting any action on the faith thereof and shall incur no liability or responsibility for so doing.

(e) The Investment Provider shall not be required to take any action under the Plan concerning any investment, if such action would be contrary to the terms of such investment, any state or federal law, or the rules of the NASD or the applicable securities exchange.

(f) Until notice of any amendment of the Plan, termination of the Plan, or change in any appointment has been received by the Investment Provider at its principal office, the Investment Provider shall be fully protected in assuming that the Plan has not been amended or terminated and in dealing with any party according to the latest information received by the Investment Provider at its principal office.

Section 8.06 Claims Procedure.

(a) Initial Claims. The Employer shall make all determinations as to the right of any person to receive a distribution and as to other matters affecting benefits. Each Employee, Participant, Beneficiary or other person (collectively referred to as "claimant") shall have the right to submit a claim with respect to any benefit sought under the Plan, or with respect to the claimant's eligibility, vesting or other factor affecting benefits, either personally or through a representative duly authorized in writing. All claims shall be submitted in writing to the Employer and shall be accompanied by such information and documentation as the Employer determines is required to make a ruling on the claim. Upon receipt of a claim, the Employer shall consider the claim and shall render a decision within a reasonable period of time. A failure of the Employer to render a decision within a reasonable period of time shall be deemed to be a denial of the claim.

(b) Limitation on Claims Procedure. Any claim under this claims procedure must be submitted within twelve months from the earlier of (1) the date on which the claimant learned of facts sufficient to enable him/her to formulate such claim, or (2) the date on which the claimant reasonably should have been expected to learn of facts sufficient to enable him/her to formulate such claim.

(c) Review of Denied Claims. A claimant whose claim for benefits has been wholly or partially denied by the Employer may request, within 90 days following the date of such denial, a review of such denial. The request for review must be in writing and must be delivered to the Employer within the specified 90-day period. The request should set forth the reasons why the claimant believes the denial of his/her claim is incorrect. The claimant shall be entitled to submit such issues or comments, in writing or otherwise, as he/she shall consider relevant to a determination of his/her claim and may include a request for a hearing in person before the Employer. Prior to submitting his/her request, the claimant shall be entitled to review such documents as the Employer shall agree are pertinent to his/her claim. The claimant may, at all stages of review, be represented by counsel, legal or otherwise, of his/her choice, provided that the fees and expenses of such counsel shall be borne by the claimant. All requests for review shall be promptly resolved. The Employer's decision with respect to any such review shall be set forth in writing and shall be mailed to the claimant within a reasonable period of time following receipt by the Employer of the claimant's request. If no decision or review is rendered within a reasonable period of time, the claimant's appeal shall be deemed denied and the Employer's original denial of the claim affirmed.

(d) Finality of Decisions. The decision of the Employer upon review of any claim under paragraph (c) above shall be binding upon the claimant, his/her heirs and assigns, and all other persons claiming by, through or under him.

Section 8.07 Special Ruling. In order to resolve problems concerning the Plan and to apply the Plan in unusual factual circumstances, the Administrator, in addition to being empowered to make rules of general application, also may, at the request of the Employer, make special rulings. Such special rulings shall be in writing on a form to be developed by the Administrator. In making its rulings, the Administrator may consult with legal, accounting, actuarial, investment and other counsel or advisers. Once made, special rulings shall be applied uniformly, except that the Administrator shall not be bound by such rulings in future cases unless the factual situation of a case is identical to that involved in the special ruling. Special rulings shall be made in accordance with all applicable law and in accordance with the Plan. It is not intended that the special ruling procedure will be a frequently used device, but that it should be followed only in extraordinary situations. The Administrator always shall have the final decision as to whether resort is made to this special ruling feature.

Section 8.08 Reliance. The Employer, Administrator, Trustee, Investment Provider and BENCOR each may rely upon any direction, information or action of the other as being proper under the Plan and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that the Employer, Administrator, Trustee, Investment Provider and BENCOR each shall be responsible for the proper exercise of its own respective powers, duties, responsibilities and obligations under the Plan and shall not be responsible for any act or failure to act of any other, and none of them guarantees the Plan assets in any manner against investment loss or depreciation of asset value.

Section 8.09 Employment of Advisers. The Employer, Administrator, Trustee, Investment Provider and BENCOR shall have the authority to employ such legal, accounting, actuarial, and financial counsel and advisers, as they shall deem necessary in connection with the performance of their duties under the Plan, and to act in accordance with the advice of such counsel and advisers. Except as otherwise provided in the Plan, the fees and expenses of such counsel and advisers shall be paid by the respective party who retained the counsel or adviser, except that, upon approval of the Employer, such fees and expenses may be paid out of Plan assets as the Employer shall deem appropriate.

ARTICLE 9

AMENDMENT AND TERMINATION

Section 9.01 Amendment of the Plan.

(a) Right To Amend. Both the Employer and BENCOR reserve the right to amend the Plan. Amendments by the Employer shall be limited to changes in selections made in the Adoption Agreement and shall be effected by execution of a new Adoption Agreement, except the Employer also may make amendments by adoption of sample or model amendments (including interim or discretionary amendments related to changes in qualification requirements) that by law will not cause the Plan to be considered identical to the pre-approved plan. Amendments may be made by BENCOR in either the BENCOR Plan or in the Adoption Agreement terms, provided that: (1) no such amendment shall alter or amend any of the elections or specifications set forth by the Employer in the Adoption Agreement except as provided by paragraph (b) below; and (2) any amendment made by BENCOR, except as provided by paragraph (b) below, shall not be deemed adopted or be binding upon the Employer until approved in writing by the Employer. BENCOR shall seek approval of amendments adopted by it from the Internal Revenue Service, if necessary, to maintain the approved status of the BENCOR Plan.

(b) Amendments Required by Law.

(1) BENCOR will amend the BENCOR Plan and/or the Adoption Agreement on behalf of the Employer for any changes required by the Code, Treasury Regulations, revenue rulings, other statements published by the Internal Revenue Service, including model, sample or other required good faith amendments (but only if their adoption will not cause the Plan to be individually designed), and for correction of prior approved plans. These amendments will be applied to all employers that have adopted the BENCOR Plan.

(2) BENCOR will no longer have the authority to amend the Plan on behalf of the Employer as of either: (A) the date the Service requires the Employer to file Form 5300 as an individually designed plan as a result of an Employer amendment to the Plan to incorporate a type of plan or provision not allowable in the IRS Pre-approved Plan program, as described in Rev. Proc. 2017-41, or (B) as of the date the Plan otherwise is considered to be an individually designed plan due to the nature and extent of the amendments. If the Employer is required to obtain a determination letter for any reason in order to maintain reliance on the advisory letter, BENCOR's authority to amend the Plan on behalf of the Employer is conditioned on the Plan receiving a favorable determination letter.

(3) BENCOR will maintain, or have maintained on its behalf, a record of the employers that have adopted the BENCOR Plan and will make reasonable and diligent efforts to ensure that employers have received and are aware of all Plan amendments and that such employers adopt new documents when necessary. This paragraph (b) supersedes other provisions of the Plan to the extent those provisions are inconsistent with this paragraph.

(c) Operation of Amendments. Except as may be specifically provided otherwise in the Plan, or in any amendment to the Plan, each amendment to the Plan shall operate prospectively only from the effective date of the amendment, and the rights and obligations of an Employee, Participant, or Beneficiary of a Participant, who retires, becomes disabled, dies or otherwise terminates employment with the Employer prior to the effective date of any amendment, shall be determined without regard to such amendment, on the basis of the Plan terms in effect on the date of retirement, disability, death, or other termination of employment.

(d) Prohibition against Reversion of Assets. Except as provided in the Code and applicable regulations, no amendment shall cause any part of the Fund to be used for, or diverted to, any purpose other than the exclusive benefit of Participants and their Beneficiaries.

Section 9.02 Termination of the Plan.

(a) Termination. Although it is intended that the Plan shall be permanent, the Employer reserves and shall have the right at any time to terminate or partially terminate the Plan, by delivering to BENCOR written notice of such termination, but only upon the condition that action is taken as shall render it impossible, except as specifically provided in Article 3, for any part of the Plan assets to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries. If the Plan is terminated, the Employer shall direct the Trustee to distribute the assets remaining in the Fund to Participants and their Beneficiaries as soon as administratively feasible. In the event of the dissolution, merger, consolidation or reorganization of the Employer, the Plan shall terminate, and the Plan assets shall be liquidated unless the Plan is continued by a successor to the Employer in accordance with Section 9.03(b).

(b) Termination and Transfer to New Plan. If the Employer notifies BENCOR in writing (1) that it has established another plan providing comparable benefits to this Plan, (2) that such other plan meets the requirements of Code Section 401(a) that are applicable to governmental plans, and (3) that the Employer intends to discontinue contributions under this Plan due to the liabilities created under the new plan, then, upon further written direction from the Employer, the Fund shall be liquidated and the proceeds transferred to such newly created plan. Subsequently, this Plan shall cease to

have any effect with respect to Participants employed by the Employer and their Beneficiaries, and the rights of the parties shall be determined under the new plan.

(c) Rights upon Termination. If the Plan should be terminated or partially terminated, if the Employer completely discontinues contributions, or if a receiver of the Employer is appointed, or if the Plan should be wholly or partially terminated for any other reason, the Accounts of all Participants as then appearing upon the records of the Administrator (other than Accounts of former Employees who have terminated employment and who have incurred a Break in Service), or in the case of partial termination, the Accounts of affected Participants, shall become fully vested to the extent not already vested in accordance with the regular Plan terms, the amounts carried in said Accounts shall be revalued and adjusted as previously provided in the Plan, and said Accounts (after payment of expenses properly chargeable to the Fund and allocated among the Accounts) shall be distributed as soon as administratively feasible to affected Participants and Beneficiaries or transferred to a new plan as provided in paragraph (b) above. Whether a partial termination of the Plan has occurred under any circumstances shall be determined by the Administrator using guidance provided by Rev. Rul. 2007-43.

(d) Manner of Distribution. To the extent that no discrimination in value results, any distribution or transfer after termination of the Plan may be made, in whole or in part, in cash or in nontransferable annuity contracts. All non-cash distributions and transfers shall be valued at current fair market value.

Section 9.03 Predecessor and Successor Employers.

(a) Predecessor Employer. Employment with a predecessor employer shall be considered service with the Employer under this Plan to the extent required by the Code. Provided, however, that where such employment with a predecessor employer is not required by the Code to be considered service with the Employer, the Employer, in its discretion, nevertheless, may grant credit for such service under such uniform and non-discriminatory rules as may be established from time to time by the Employer.

(b) Successor Employer. In the event of any merger or consolidation of the Plan with, or transfer in whole or in part of the assets and liabilities of the Plan to, another plan of deferred compensation maintained or to be established for the benefit of all or some of the Participants of this Plan, the assets of the Plan applicable to such Participants shall be transferred to the other plan only if: (1) each Participant would (if either this Plan or the other plan then terminated) receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he/she would have been entitled to receive immediately before the merger, consolidation, or transfer (if this Plan had been terminated); (2) resolutions of the governing body of the Employer under this Plan, and of the governing body of any new or successor employer of the affected Participants, shall authorize such transfer of assets; and, in the case of the new or

successor employer of the affected Participants, its resolutions shall include an assumption of liabilities with respect to such Participants' inclusion in the new employer's plan; (3) such other plan is qualified under Code Sections 401(a) and 501(a); and (4) the change in sponsorship of the Plan is in connection with a transfer of business assets or operations of the Employer to the new sponsor.

Section 9.04 Notice. The Employer and affected Participants shall be given notice by the Administrator of any amendments to, any merger, consolidation, division or termination of the Plan or any transfer of Plan assets to another plan.

ARTICLE 10

MISCELLANEOUS PROVISIONS

Section 10.01 Payments for the Benefit of Payee. In the event that the Employer finds that any person to whom a benefit is payable under the terms of the Plan is unable to care for his/her affairs because of illness or accident, is otherwise mentally or physically incompetent, or is unable to give a valid receipt, the Employer, upon receipt of a durable power of attorney that complies with applicable state law or letters of authority of a guardian or conservator appointed by a court of competent jurisdiction, may direct the Trustee to make the payments becoming due to such person to another individual for such person's benefit, without responsibility on the part of the Employer or the Trustee to follow the application of such payment. Any such payment shall be a payment for the account of such person and shall operate as a complete discharge of all parties from any liability under the Plan.

Section 10.02 Employer's Rights. While the Employer believes in the benefits, policies and procedures described in the Plan, the language used in the Plan is not intended to create, nor is it to be construed to constitute, a contract of employment between the Employer and any of its Employees. Subject to any collective bargaining agreement, the Employer retains all its rights to discipline or discharge Employees or to exercise its rights as to incidents and tenure of employment. Employees retain the right to terminate their employment at any time and for any reason, and the Employer retains a similar right.

Section 10.03 Addresses and Mailing of Notices and Checks. Each recipient of benefits from the Plan shall be responsible for furnishing the Employer with his/her address, and the Employer in turn shall communicate such information to the Administrator. Any notices required or permitted to be given under the Plan shall be deemed given if directed to such address and mailed by regular United States mail. If any check mailed by regular United States mail to such address is returned, mailing of checks will be suspended until a correct address is furnished by the intended recipient.

Section 10.04 Action by Employer. Unless otherwise provided in the Plan, whenever the Employer under the terms of the Plan is permitted or required to do or perform any act, such act shall be done by the authority of the Employer's governing body, or by such employee of the Employer who may be duly authorized by the Employer's governing body.

Section 10.05 Construction.

(a) Gender; Singular and Plural Words. Wherever any words are used in the Plan in the masculine gender, they shall be construed as though they also were used in the feminine gender in all cases where they would so apply, and wherever any words are used in the Plan in the singular form, they shall be construed as though they also were used in the plural form in all cases where they would so apply.

(b) Headings. Headings of articles, sections and paragraphs of this instrument are inserted for convenience of reference. They constitute no part of the Plan and are not to be considered in the construction of the Plan.

(c) Savings Clause. If any provisions of the Plan shall be for any reason invalid or unenforceable, the remaining provisions nevertheless shall be carried into effect.

ARTICLE 11

DEFINITIONS

Section 11.01 “Account” means the interest of a Participant in the Plan’s assets as determined as of each Accounting Date and as reflected in the records maintained by the Plan. Where appropriate, a Participant’s Account also means the subaccounts that may be established to identify and track contributions of a specific character, which may be mere bookkeeping entries or individually or collectively segregated funds, as determined by the Administrator and the Trustee.

Section 11.02 “Accounting Date” means the last day of each Plan Year and any other date on which the Plan assets are valued and allocations to Accounts are made pursuant to Article 4.

Section 11.03 “Administrator” means the organization specifically designated from time to time by BENCOR to carry out the administrative functions specified in the Plan.

Section 11.04 “Adoption Agreement” means the agreement executed by the Employer for purposes of adoption of the BENCOR Plan and election of alternative provisions offered by the adoption agreement.

Section 11.05 “BENCOR” means BENCOR, Inc.

Section 11.06 “Beneficiary” means the beneficiary or beneficiaries of the Participant under the Plan as designated pursuant to Section 5.03(c).

Section 11.07 “Break in Service” means a Break in Service as described under Section 7.01(b).

Section 11.08 “Code” means the Internal Revenue Code of 1986, as amended.

Section 11.09 “Compensation” means the amount calculated for each Participant in accordance with Part 2(b) of the Adoption Agreement, except that compensation of any Participant for any Plan Year shall be disregarded for purposes specified in Treasury Regulations issued under Code Section 401(a)(17) to the extent it exceeds the cost-of-living adjusted dollar amount determined for the year in accordance with Section 7.03(b)(3)(G). The cost-of-living adjusted dollar amount in effect for any calendar year applies to annual Compensation for the Plan Year that begins with or within such calendar year.

Section 11.10 “Effective Date” means the date that the terms of this Plan first become effective with respect to the Employer, or the subsequent effective date of the Plan’s amendment and restatement, as set forth in Part 1 of the Adoption Agreement.

Section 11.11 “Employee” means any common-law employee of the Employer.

Section 11.12 “Employer” means the governmental entity, which is a state government or a political subdivision or any agency or instrumentality of either of the foregoing, and which has adopted the Plan in accordance with the Adoption Agreement.

Section 11.13 “Fund” means the trust fund established pursuant to Article 8 for the purpose of holding and investing contributions made under the Plan, and out of which distributions are made pursuant to Article 6, and subject to the trust agreement and/or any other required documents and forms, including a custodial account or contract described in Code Section 401(f) and Treasury Regulation 1.401(f)-1 and treated under each as a qualified trust.

Section 11.14 “Group Annuity Contract” means any group annuity contract held by the Trustee and in which contributions under the Plan may be invested for the benefit of Participants.

Section 11.15 “Highly Compensated Employee” means any employee who for the preceding year had annual compensation (as defined in Section 7.03(b)(3)) from the Employer in excess of \$120,000 (as adjusted after 2017 by the Secretary of Treasury). A Non-Highly Compensated Employee means any employee who is not a Highly Compensated Employee.

Section 11.16 “Investment Provider” means the entity or entities selected by BENCOR and providing the investment products in which contributions under the Plan may be invested for the benefit of Participants.

Section 11.17 “Normal Retirement Age” means the age and, if applicable, at least the number of years of participation, as set forth in Part 2(e) of the Adoption Agreement.

Section 11.18 “Participant” means an Employee who has met the eligibility requirements specified in Part 3 of the Adoption Agreement, who has commenced participation in the Plan in accordance with Article 2, and whose participation has not terminated under the other applicable provisions of the Plan.

Section 11.19 “Plan” means the retirement plan of the Employer as described in this instrument, the Adoption Agreement, and any subsequent amendments.

Section 11.20 "Plan Year" means the annual period defined in Part 2(a) of the Adoption Agreement.

Section 11.21 "Trust Agreement" means the separate written agreement, declaration and/or other forms and documents under which the Fund is maintained as executed by BENCOR and the Trustee. By execution of the Adoption Agreement, the Employer agrees to the terms of the Trust Agreement, and the Trustee shall be fully protected in taking, permitting or omitting any action in accordance with the terms of the Trust Agreement and shall incur no liability or responsibility for carrying out such actions as directed by the Employer or otherwise executing its responsibilities in accordance with the terms of the Trust Agreement. In the event of any conflict between the terms of the Plan and the Trust Agreement, the terms of the Plan shall control.


Section 11.22 "Trustee" means the party duly selected and appointed from time to time by BENCOR and currently serving as trustee under the Trust Agreement, including a person (such as a custodian) meeting the requirements of, holding the assets of the Plan pursuant to, and treated as the trustee under, Code Section 401(f) and Treasury Regulation 1.401(f)-1.

Section 11.23 "Year of Service" means a Year of Service as described in Section 7.01.

Dated: August 17, 2021

BENCOR, INC.

By:



Hugh B. Bishop, President

BENCOR CS0NY L1
(09/12/2019)
Reformatted
(09/08/2021)



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Plan Description: Standardized Pre-Approved Profit Sharing Plan
FFN: 317D2290001-001 Case: 201900029 EIN: 61-1245456
Letter Serial No: Q702325a
Date of Submission: 12/31/2018

BENCOR INC
1 SARASOTA TOWER SUITE 602
2 NORTH TAMiami TRAIL
SARASOTA, FL 34236

Contact Person:
Janell Hayes
Telephone Number:
513-975-6319
In Reference To: TEGE:EP:7521
Date: 06/30/2020

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable for use by employers for the benefit of their employees under Internal Revenue Code (IRC) Section 401.

We considered the changes in qualification requirements in the 2017 Cumulative List of Notice 2017-37, 2017-29 Internal Revenue Bulletin (IRB) 89. Our opinion relates only to the acceptability of the form of the plan under the IRC. We did not consider the effect of other federal or local statutes.

You must provide the following to each employer who adopts this plan:

- . A copy of this letter
- . A copy of the approved plan
- . Copies of any subsequent amendments including their dates of adoption
- . Direct contact information including address and telephone number of the plan provider

Our opinion on the acceptability of the plan's form is a determination as to the qualification of the plan as adopted by a particular employer only under the circumstances, and to the extent, described in Revenue Procedure (Rev. Proc.) 2017-41, 2017-29 I.R.B. 92. The employer who adopts this plan can generally rely on this letter to the extent described in Rev. Proc. 2017-41. Thus, Employee Plans Determinations, except as provided in Section 12 of Rev. Proc. 2020-4, 2020-01 I.R.B. 148 (as updated annually), will not issue a determination letter to an employer who adopts this plan. Review Rev. Proc. 2020-4 to determine the eligibility of an adopting employer, and the items needed, to submit a determination letter application. The employer must also follow the terms of the plan in operation.

An employer who adopts this plan may not rely on this letter if the coverage and contributions or benefits under the employer's plan are more favorable for highly compensated employees, as defined in IRC Section 414(q).

Our opinion doesn't apply for purposes of IRC Sections 415 and 416 if an employer maintains or ever maintained another qualified plan for one or more employees covered by this plan. For this purpose, we will not consider the employer to have maintained another defined contribution plan provided both of the following are true:

- . The employer terminated the other plan before the effective date of this plan
- . No annual additions were credited to any participant's account under the other plan as of any date within the limitation year of this plan

Also, for this purpose, we'll consider an employer as maintaining another defined contribution plan if the

employer maintains any of the following:

- . A welfare benefit fund defined in IRC Section 419(e), which provides post-retirement medical benefits allocated to separate accounts for key employees as defined in IRC Section 419A(d)
- . An individual medical account as defined in IRC Section 415(l)(2), which is part of a pension or annuity plan maintained by the employer
- . A simplified employee pension plan

An employer who adopts this plan may not rely on an opinion letter for either of the following:

- . If the timing of any amendment or series of amendments to the plan satisfies the nondiscrimination requirements of Treasury Regulations 1.401(a)(4)-5(a), except with respect to plan amendments granting past service that meet the safe harbor described in Treasury Regulations 1.401(a)(4)-5(a)(3) and are not part of a pattern of amendments that significantly discriminates in favor of highly compensated employees
- . If the plan satisfies the effective availability requirement of Treasury Regulations 1.401(a)(4)-4(c) for any benefit, right, or feature

An employer who adopts this plan as an amendment to a plan other than a standardized plan may not rely on this opinion letter about whether a prospectively eliminated benefit, right, or other feature satisfies the current availability requirements of Treasury Regulations 1.401(a)(4)-4.

Our opinion doesn't apply to Treasury Regulations 1.401(a)-1(b)(2) requirements for a money purchase plan or target benefit plan where the normal retirement age under the employer's plan is lower than age 62.

Our opinion doesn't constitute a determination that the plan is an IRC Section 414(d) governmental plan. This letter is not a ruling with respect to the tax treatment to be given contributions that are picked up by the governmental employing unit within the meaning of IRC Section 414(h)(2).

Our opinion doesn't constitute a determination that the plan is an IRC Section 414(e) church plan.

Our opinion may not be relied on by a non-electing church plan for rules governing pre-ERISA participation and coverage.

The provisions of this plan override any conflicting provision contained in the trust or custodial account documents used with the plan, and an adopting employer may not rely on this letter to the extent that provisions of a trust or custodial account that are a separate portion of the plan override or conflict with the provisions of the plan document. This opinion letter does not cover any provisions in trust or custodial account documents.

An employer who adopts this plan may not rely on this letter when:

- . the plan is being used to amend or restate a plan of the employer which was not previously qualified
- . the employer's adoption of the plan precedes the issuance of the letter
- . the employer doesn't correctly complete the adoption agreement or other elective provisions in the plan
- . the plan is not identical to the pre-approved plan (that is, the employer has made amendments that cause the plan not to be considered identical to the pre-approved plan, as described in Section 8.03 of Rev. Proc. 2017-41)

Our opinion doesn't apply to what is contained in any documents referenced outside the plan or adoption agreement, if applicable, such as a collective bargaining agreement.

Our opinion doesn't consider issues under Title I of the Employee Retirement Income Security Act (ERISA) which are administered by the Department of Labor.

If you, the pre-approved plan provider, have questions about the status of this case, you can call the telephone number at the top of the first page of this letter. This number is only for the provider's use. Individual participants or adopting eligible employers with questions about the plan should contact you.

You must include your address and telephone number on the pre-approved plan or the plan's adoption agreement, if applicable, so that adopting employers can contact you directly.

If you write to us about this plan, provide your telephone number and the best time to call if we need more information. Whether you call or write, refer to the letter serial number and file folder number at the top of the first page of this letter.

Let us know if you change or discontinue sponsorship of this plan.

Keep this letter for your records.

Sincerely Yours,



Khin M. Chow
Director, EP Rulings & Agreements

Letter 6186 (June-2020)
Catalog Number 72434C

**BENCOR
NATIONAL GOVERNMENT EMPLOYEES RETIREMENT PLAN™**

Investment Direction Election

EMPLOYER NAME: Palm Beach County Board of County Commissioners, Florida

PLAN BENCOR PLAN TYPE(S): Palm Beach County BCC 401(a) Special Pay Plan

Pursuant to the Adoption Agreement, Plan assets shall be invested by the Custodian at the direction of the participants.

The Custodian shall invest all plan assets through Charles Schwab Trust Company.

Contributions shall be invested according to participant elections, if any, otherwise into the following designated account in the percentage indicated:

Check One	Percentage	Account Name
<input checked="" type="checkbox"/>	100%	<u>Lincoln Stable Value</u>
-OR-		
<input type="checkbox"/>	100%	_____
-OR-		
<input type="checkbox"/>	100%	_____
		(Other – Insert Fund Name)

The instructions on this form supersede any prior investment direction and shall become effective upon execution.

Authorized Signer for Employer/ Contract Holder

Print Name

Title



BENCOR National Government Employees Retirement Plan™ Master Directed Benefit Custody Agreement

This **DIRECTED BENEFIT CUSTODY AGREEMENT** ("Agreement") is entered into by and between BENCOR, Inc. ("BENCOR") and Charles Schwab Bank ("Custodian"). The Agreement relates to the BENCOR National Government Employees Retirement Plan™ ("Bencor Plan") and to one or more accounts (each an "Account") which has been established by the Custodian under this Agreement to hold the assets transferred on the effective date to the Custodian at the direction of BENCOR from the current trustee of the Bencor Plan, Reliance Trust Company, for the benefit of participants and beneficiaries of the individual plans (each being referred to as a "Plan" and collectively as the "Plans") established pursuant to the Bencor Plan by governmental employers (each being referred to as an "Employer" and collectively as the "Employers"), as well as contributions made to the Plans by the Employers subsequent to the effective date. This Agreement is effective on the date it is accepted by the Custodian.

PURPOSE OF ACCOUNT

Each Employer has adopted a Plan by executing an Adoption Agreement under the Bencor Plan for the exclusive purpose of providing benefits to certain of its employees who are eligible to become participants in the Plan by meeting specified eligibility requirements (as well as beneficiaries of participants) and defraying reasonable expenses of administering the Plan. Each such Plan provides that, from time to time, cash and other assets may be paid to a trustee or custodian selected by BENCOR to be held and administered by an administrator ("Administrator"), also selected by BENCOR, as a trust for the uses and purposes of each Employer's Plan.

BENCOR and the Custodian enter into this Agreement whereby BENCOR appoints Custodian to act as custodian of the cash, marketable securities and other property acceptable to the Custodian (as described in Article 2.5) that may be contributed by Employers from time to time to the Account for each such Employer's Plan (collectively "Account Assets") pursuant to the terms of each respective Plan. The Custodian will have no duties or responsibilities with respect to any property other than cash, marketable securities and other property accepted by the Custodian. Charles Schwab Bank agrees to act as the Custodian of the Account according to the terms and conditions of this Agreement.

The parties agree that the Custodian will (i) establish an account to hold the account assets transferred to the Custodian hereunder, (ii) provide safekeeping and custody of Account Assets held in such Account, and (iii) perform the functions and duties assigned to it under this Agreement subject to directions of BENCOR and the Administrator. The Custodian will act only at the direction of BENCOR or the Administrator who has been identified by BENCOR to the Custodian as a party authorized to act on behalf of each Plan and for each Employer. The Custodian has no authority to take any discretionary action and does not exercise discretionary authority or control with respect to assets or any Plan, is not a trustee or fiduciary to any Plan and does not have any fiduciary responsibility with regard to the administration of any Plan or the management of any Plan assets. BENCOR warrants and represents that all directions provided to the Custodian by it or the Administrator will be in conformity with the terms of the applicable Plan and related documents ("collectively, "Plan Documents"), and acknowledges and agrees that the Custodian shall have no liability or responsibility in this regard.

BENCOR warrants and represents that the transfer of custody of Account Assets to the Custodian hereunder and the maintenance of custody by Custodian is authorized by BENCOR pursuant to the terms of the Bencor Plan. BENCOR further warrants and represents that the Plan Documents are in full



force and effect and have not been revoked, modified or amended in any way that would cause the representations made in this Agreement to be inaccurate or incorrect. BENCOR confirms that it is authorized to enter into this Agreement and to carry out all of its duties as described in this Agreement.

The Custodian is subject to directions of BENCOR and the Administrator given in accordance with this Agreement. BENCOR's and the Administrator's directions may be given by (i) one or more individuals designated by BENCOR or the Administrator to act on the each one's behalf, or (ii) any other person authorized in writing by BENCOR or the Administrator or such designated individual(s). BENCOR will direct the Administrator to notify the Custodian of the identity of any person(s) authorized to act on the Administrator's behalf from time to time and to notify the Custodian promptly of any person who ceases to be authorized to act and any person who becomes authorized to act. The Custodian will be entitled to rely in good faith on directions received from such authorized person(s) until notified by BENCOR or the Administrator to the contrary, and acknowledges and agrees that the Custodian shall have no liability or responsibility in this regard.

ARTICLE 1 - CONTRIBUTIONS AND DISTRIBUTIONS

1.1 BENCOR Directions. BENCOR has delegated to the Administrator various rights, powers and responsibilities with respect to the operation and administration of the Plans and of the Account. BENCOR will identify in a written notice to the Custodian the identity of the current and any subsequent changes in the Administrator. Such notice will contain specimens of the authorized signatures and other security information that when presented will permit the Custodian to rely upon directions received from the Administrator.

At the Custodian's request, BENCOR will provide the Custodian with copies of all documents required by the Custodian at or before the time this Agreement is executed by the parties and will provide the Custodian with all other documents amending or supplementing such documents promptly upon their adoption. At the Custodian's request, BENCOR will provide the Custodian with copies of all agreements with all agents appointed by BENCOR or the Administrator and all other documents amending or supplementing such agreements.

Directions from the Administrator to the Custodian will be in writing and signed by the Administrator or persons authorized by the Administrator or may be made by any other method acceptable to the Custodian.

1.2 Contributions. Contributions or transfers required by the Plan Documents will be delivered to the Custodian for inclusion in the Account by each Employer. All contributions or transfers will be received by the Custodian in cash or in other property acceptable to the Custodian (as described in Article 2.5). The Account will consist of the contributions and transfers received by the Custodian, together with the income on, and increment in, such assets. The Custodian will manage and administer the Account without distinction between principal and income.

The Custodian has no responsibility to (i) monitor or enforce contributions required or permitted by the Plan Documents, (ii) compute the required amount of such contributions, (iii) determine whether the Account is sufficient to provide benefits described in the Plan Documents, or (iv) determine whether



contributions actually made comply with the Plan Documents, the Internal Revenue Code of 1986, as amended (the "Code") or the regulations promulgated thereunder. Contributions normally will be made by wire transfer of cash or by check, or in the form of property acceptable to the Custodian.

1.3 Rollover Contributions. At the written direction of the Administrator, the Custodian will accept a rollover contribution to the Account on behalf of an employee eligible to make such a contribution. Such contributions will consist of cash or other property otherwise accepted by the Custodian. The Administrator will be solely responsible for determining, and the Custodian will have no responsibility for determining:

(a) Where applicable, that such contributions constitute eligible rollover contributions within the meaning of Code Section 402(c)(4) or 408(d)(3);

(b) Whether the employee making the contribution is eligible to do so because he or she is either a participant or an eligible employee who is about to become a participant; and

(c) Where applicable, that the contribution was distributed from an employee benefit plan qualified under Code Section 401(a), a Code Section 403(b) plan, a governmental deferred compensation plan under Code Section 457, from an individual retirement account or annuity described in Code Section 408 or from any other plan from which it is appropriate to accept rollover contributions.

The Custodian will accept such contributions as directed by the Administrator, in an account-to-account transfer directly from the trustee or custodian of the eligible retirement plan from which the distribution is made.

1.4 Collection of Income and Principal. The Custodian will collect the income when paid on Account Assets and principal of Account Assets when paid on maturity, redemption, sale or otherwise and invest it as directed in accordance with Articles 2 and 3. The Custodian will make reasonable efforts to diligently collect income and principal of which the Custodian has received actual notice in accordance with normal industry practices. The Custodian will be under no duty to take any action to effect collection of any amounts with respect to which payment is in default, or if payment is refused after due demand. The Custodian will notify the Administrator of any default or refusal to pay.

1.5 Payments and Distributions. At the written direction of the Administrator, the Custodian from time to time will make distributions or transfers from the Account as specified in such directions, including distributions for the payment of reasonable Plan expenses. The Custodian will comply with the Administrator's instruction and will have no responsibility or liability for making any distribution or transfer directed by the Administrator and will be under no duty to inquire whether directions from the Administrator conform to Plan provisions, the Code or regulations promulgated thereunder.

The Administrator will furnish to the Custodian all information necessary to enable the Custodian to withhold from each distribution the amount necessary to pay Federal and state income taxes due. If the Administrator fails to provide adequate tax withholding information, the Custodian will have no obligation to withhold any amount to cover the payment of such taxes. However, the Custodian may, in its sole discretion, and to the extent required under applicable law, withhold from any distribution to



any payee such sum as the Custodian may reasonably estimate is necessary to cover required Federal and state taxes which are, or may be, assessed with regard to the amount distributable to such payee. Upon the discharge or settlement of such tax liability the Custodian will pay the balance of such sum, if any, to such payee.

Payments by the Custodian will be delivered or mailed to addresses supplied by the Administrator, or if the Administrator does not provide an address, to the recipient in care of the Administrator. The Custodian's obligation to make such payments will be satisfied upon such delivery or mailing. The Custodian will have no obligation to determine the identity of persons entitled to benefits or their mailing addresses.

If the payment made to a participant or beneficiary is returned to the Custodian, or if the payment is not perfected within such time limits as the Custodian in its sole discretion may determine from time to time, the Custodian will inform the Administrator. It will be the responsibility of the Administrator to instruct the Custodian on the proper disposition of the payment under the terms of the Plan, and the Custodian will have no obligation to take any further action with respect to such payment absent such instructions.

1.6 Participant Loans and Qualified Domestic Relations Orders. If a Plan authorizes loans to that Plan's participants, the Custodian will issue such loans from the Account at the direction of the Administrator. Likewise, the Custodian will make payments pursuant to domestic relations orders ("DRO") only at the direction of the Administrator. The Custodian will have no administrative obligations or liability with regard to loans or DROs other than as specifically provided herein.

1.7 Custodian's Reliance on Administrator's Directions. The Custodian shall rely upon directions from the Administrator in making payments from the Account, including payments pursuant to a domestic relations order determined by the Administrator to be qualified within the meaning of Code Section 414(p), or payments made to satisfy taxes due. The Custodian will have no liability for payments made, or for failure to make payments, or for discontinuing payments, on the direction of the Administrator. The Custodian will have no liability for failure to make payments from the Account in the absence of written directions from the Administrator.

The Custodian may request instructions from the Administrator and will have no duty to act or liability for failure to act if such instructions are not forthcoming from the Administrator.

1.8 Disputed Payments. If any controversy or disagreement arises regarding any payment from the Account or the person(s) to whom payment or delivery of any asset should be made by the Custodian, the Custodian may retain the assets involved without liability pending settlement of the controversy or disagreement and/or require that such controversy or disagreement be adjudicated pursuant to arbitration as provided in Article 9.3. The Custodian will not be liable for the payment of any interest or income on such assets that it retains pursuant to the instruction of an arbitrator. The Custodian may consult its legal counsel or legal counsel designated by BENCOR and will be protected to the extent permitted by law in acting upon advice of counsel.



ARTICLE 2 - RESPONSIBILITY AND INDEMNIFICATION

2.1 Direction of Investments. The BENCOR Plan allows Employers to select in an Adoption Agreement whether the Employer or Participants will direct investments of contributions and balances of participant accounts. It is the responsibility of the Administrator to advise the Custodian of investment directions, and the Custodian shall have no responsibility to determine whether any direction came from an Employer or a participant or whether the direction is accurate and proper; the Custodian's only duty shall be to assure that a direction received by it is implemented promptly. Except as otherwise provided in this Agreement, the Custodian will have no duty or responsibility to review, initiate action or make recommendations regarding Account Assets and will retain assets until directed in writing by the Administrator or its delegate to dispose of them.

2.2 Status of Employers, Administrator and Custodian. The responsibilities of the Custodian at all times will be limited to those expressly set forth in this Agreement. Each of the Custodian, BENCOR, the Administrator, any Employer and any person who is delegated with authority to act on behalf of any of the foregoing with respect to this Agreement will be responsible solely for its own acts and will have no responsibility for the acts or omissions of any other person.

2.3 Participant Direction of Investments. For Plans that permit a participant to direct the investment of his or her account assets, the Custodian will, upon written instructions from the Administrator, establish on behalf of a participant or beneficiary a Schwab Personal Choice Retirement Account™ ("PCRA Account") at Charles Schwab & Co., Inc. (the "Broker/Dealer"). Such Account will be used to segregate the assets representing the value of an individual participant's or beneficiary's account(s) under the Plan. The participant or beneficiary will be allowed to manage the investment of the assets in his or her PCRA Account and will be solely responsible for any loss resulting from his or her exercise of control over the assets segregated into his or her PCRA Account.

2.4 Acceptable Investments. Depending on the Custodian's ability to support and administer the asset, the Custodian's powers and duties over the asset, the type of account, the business risk, and other factors, the Custodian will accept assets for acquisition or holding in the Account, including in a Schwab Advisor Portfolio or a participant's PCRA Account as described under Article 2.3. The Administrator shall be solely responsible for determining whether the investment is appropriate, prudent and permissible under ERISA, where applicable, the Internal Revenue Code, and any other applicable law, rules, and regulations, whether the investment is permissible under the terms of the Plan Documents; the economic viability of the underwriter, and diversification of Account assets. The Custodian does not (i) exercise investment management powers over the Account, or (ii) determine whether a particular investment decision made by the Administrator fits the investment objectives of the Account or is otherwise appropriate for the Account.

Subject to the foregoing subjective criteria, and to other policies and procedures that may be issued by the Custodian from time to time, the following types of assets are ordinarily acceptable in the Account:



- (a) Cash;
- (b) Publicly traded stock listed on a U.S. stock exchange or regularly quoted over-the-counter;
- (c) Publicly traded bonds listed on a U.S. bond exchange or regularly quoted over-the-counter;
- (d) Mutual funds, including those available through the Broker/Dealer's Mutual Fund Marketplace;
- (e) Registered limited partnership interests, REITs and similar investments listed on a U.S. stock exchange or regularly quoted over-the-counter;
- (f) Commercial paper, bankers acceptances eligible for rediscounting at the Federal Reserve, repurchase and reverse repurchase agreements and other "money market" instruments for which trading and custodial facilities are readily available;
- (g) U.S. Government and U.S. Government Agency issues;
- (h) Municipal securities whose bid and asked values are readily available;
- (i) Federally insured savings accounts, certificates of deposit and bank investment contracts; the Directing Party is responsible for determining Federal insurance coverage and limits and for diversifying Account assets in accordance with those limits;
- (j) American depository receipts, eurobonds and similar instruments listed on a U.S. exchange or regularly quoted domestically over-the-counter for which trading and custodial facilities are readily available; and
- (k) Life insurance, fixed annuities, and guaranteed investment contracts issued by insurance companies licensed to do business in one or more states in the U.S., including, with respect to investment by non-qualified deferred compensation plans, corporate-owned life insurance policies (COLIs).

Notwithstanding the above, the Administrator understands that in certain circumstances a particular investment may be determined by the Custodian to be unacceptable, even though it would be acceptable in other instances.

Unless otherwise restricted in Article 2.6 and subject to (i) the Custodian's administrative capabilities and its sole determination of the business risk involved in holding the particular asset in question (ii) receipt of all documentation required by the Custodian or its affiliates with respect to the asset and the issuer of the asset and (iii) review and acceptance of the asset by the Custodian or its affiliate; a direction to invest the Account (including a participant's PCRA Account) in the following types of assets may be acceptable:



- (a) Unregistered limited partnerships or other pooled funds;
- (b) Other unregistered securities, closely held stock and other securities for which there is no readily available market;
- (c) Loans secured by first deeds of trust;
- (d) Other secured loans;
- (e) The securities of The Charles Schwab Corporation, its affiliates and subsidiaries; these securities may be subject to legal and regulatory prohibitions or restrictions;
- (f) Foreign securities for which trading and custodial facilities are readily available;
- (g) Covered put and call options (if held in self-directed brokerage accounts and authorized by the Administrator); and
- (h) Variable annuities issued by insurance companies licensed to do business in one or more states in the U.S.

Certain of the above types of assets are not publicly traded, and original and/or current cost basis and periodic valuations may not be readily available. For such assets (each an "Alternative Investment") accepted by the Custodian for acquisition or holding in the Account, including in a participant's PCRA Account, the Administrator acknowledges and agrees:

- (a) To consult with competent tax, accounting, and/or legal counsel with respect to the requirements applicable to periodic valuations of such assets and to comply with such requirements, in particular as these impact the Administrator's provision of directions to the Custodian with respect to such valuations.
- (b) To provide the Custodian with directions with respect to the use of original and/or current cost basis with respect to each Alternative Investment, whenever such direction is requested by the Custodian or its affiliate, including but not limited to the time of transfer of such assets to the Account.
- (c) To provide the Custodian with appropriate directions regarding the valuation of each Alternative Investment asset in accordance with Article 4.3 herein.
- (d) In the event that unrelated business taxable income ("UBTI") is generated with respect to any Alternative Investment the Custodian shall not have any responsibility or liability for and shall not make any federal tax reports or filings that require, the reporting or inclusion of this information.
- (e) To the extent that any legal documents required to effectuate the acquisition or holding of any Alternative Investment requires execution by a third party, including but not limited to a participant or beneficiary the Company agrees to provide such properly executed documents to the Custodian upon request within a reasonable timeframe prior to the transaction.



BENCOR understands that the Custodian reserves the right to refuse to purchase or hold any particular issue or asset described herein, including an Alternative Investment. BENCOR acknowledges and agrees that the purchase and holding of any such assets may be subject to additional fees as set forth in the Custodian's Fee Schedule. In addition, notwithstanding any general indemnity given elsewhere, the Custodian reserves the right to seek specific indemnity from the appropriate parties where the Custodian determines, in its sole discretion, that the acquisition or holding of a particular asset or class of asset involves unusual business risk.

2.5 Unacceptable investments. The following assets are unacceptable in the Account:

- (a) Unregistered foreign limited partnerships or other pooled funds not traded through the Depository Trust Company's Alternative Investment Program;
- (b) General partnerships or undivided interests in real property;
- (c) Tangible personal property (e.g., precious metals, gems, works of art, stamps, coins, furniture and other household items, motor vehicles, etc.);
- (d) Real estate;
- (e) Foreign currency and bank accounts;
- (f) Short sales;
- (g) Commodity futures and forward contracts;
- (h) Private or closely held debt instruments;
- (i) Oil, gas and mineral interests;
- (j) Intangible personal property (e.g., patents and rights); and
- (k) Unsecured loans.

2.6 Limitation on Liability. The Custodian will not be liable in any way for any loss resulting from a cause over which it does not have direct control and with respect to which it cannot make reasonable arrangements to mitigate, including, but not limited to, any failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems or unauthorized access, strikes or other labor disputes, acts of God, fire, war or civil strife.

2.7 Indemnification. Custodian will not be liable for any act or failure to act carried out in good faith reliance on any representation of BENCOR or the Administrator or its delegate. BENCOR will indemnify and hold harmless the Custodian and its officers, employees, affiliates and agents from and against all



liabilities, losses, expenses and claims (including reasonable attorney's fees and costs of defense) arising out of:

(a) Any action or inaction by the Custodian in accordance with the written directions (or the absence of such directions) from any party not related to or retained by the Custodian (a "Directing Party");

(b) Any action or inaction by the Custodian that results from the Custodian's reliance on the action or inaction of a Directing Party, including any such action related to directions to invest Account Assets or otherwise deal with Account Assets;

(c) With respect to a direction to invest in Alternative Investments:

(i) The Plan's inability to invest, re-invest, liquidate or collect income received with respect to such Alternative Investments;

(ii) The Custodian's use of any cost basis, unit or share, UBTI, and/or valuation information provided to it in accordance with its acceptance of such Alternative Investments or the Administrator's directions to the Custodian regarding such information, including, but not limited to: (1) use of a prior annual valuation amount where a subsequent valuation amount has not yet been obtained or for which directions from the Administrator have not yet been provided to the Custodian; (2) the Administrator's provision of an improper or incorrect valuation amount to the Custodian, (3) the failure of the Administrator to provide a valuation direction to the Custodians;

(iii) The investment, reinvestment, reporting, disclosure, liquidation and distribution under any Plan of and with respect to participant and beneficiary contributions and benefits based on such cost basis, unit or share, UBTI and/or valuation information.

(d) The Custodian's execution of its duties under this Agreement in good faith, except in the event of the Custodian's breach of its duties under this Agreement due to its own negligence or willful misconduct;

(e) The acts or omissions to act with respect to the Account by a Directing Party; or

(f) any violation by a Directing Party of the terms of the applicable Plan and related documents.

For purposes of this Article, "affiliate" means any member of a controlled group of corporations or a group of trades or businesses under common control, within the meaning of Sections 414(b) and (c) of the Code, of which the Custodian is a member.

Expenses incurred by the Custodian that it believes are subject to indemnification under this Agreement will be paid by BENCOR upon the Custodian's request, provided that BENCOR may delay payment of any amount in dispute until such dispute is resolved according to the provisions of Article 9.3 of the



Agreement. Such resolution may include the award of interest on unpaid amounts determined to be payable to the Custodian under this Article.

With respect to any Plan covered under Sections 401 and 501 or the Code, if the trust ceases to be a tax-exempt trust under such sections, BENCOR will indemnify the Custodian for any Federal or state taxes which the Custodian is required to pay as a result of any distribution made at the direction of the Administrator. Each party must notify the other promptly in the event that a claim has been made and/or suit has been brought which could give rise to rights under this Article.

All indemnities provided herein will survive termination of this Agreement.

ARTICLE 3 - CUSTODY INVESTMENTS AND CUSTODIAN POWERS

3.1 Powers of the Custodian. The Custodian will not have any discretion or authority with regard to the investment of the Account, but must act solely as a custodian of the funds contributed to it. As a custodian, the Custodian is authorized and empowered, by way of limitation, with the following powers, rights and duties, each of which the Custodian exercises solely in accordance with the written direction of BENCOR or the Administrator as directed by an Employer and/or Participants as communicated to the Custodian via the Administrator:

- (a) To hold Account Assets in the name of its nominee;
- (b) To invest and reinvest Account Assets at the direction of the Administrator and the Investment Manager;
- (c) To deposit in a securities depository any securities in accordance with applicable law;
- (d) To settle securities transactions through an institutional delivery system, either traded and settled directly in the Account or placed at a broker dealer and settled in the Account;
- (e) To execute any declarations, endorsements, assignments, stock or bond powers, affidavits, certificates of ownership or other documents required (i) to effect the sale, transfer, or other disposition of Account Assets, (ii) to obtain payment with respect to Account Assets, or (iii) to take any other action required with respect to Account Assets, and in the Custodian's own name to guarantee as the Administrator's signature any signature so affixed;
- (f) Where direction from the Administrator is not possible, to exercise such authority as is permitted to custodians under applicable law in order to carry out its responsibilities under this Agreement; and
- (g) To employ suitable agents as will be necessary and appropriate as determined by the Custodian in Custodian's sole discretion to enable Custodian to fulfill its responsibilities under this Agreement.



3.2 Insurance Contracts/Pooled Investment Vehicles. The Administrator may direct the Custodian to invest Account assets in a pooled investment vehicle funded by contracts issued by an insurance company qualified to do business in a state, including, without limitation, group annuity and guaranteed investment contracts. Any such contract may provide for the allocation of amounts received by the insurance company to its general account, one or more of its separate accounts (including pooled separate accounts), or both. Notwithstanding any other provision of the Agreement, the terms of the contract(s) governing the separate account(s) in which the Account is invested will govern the investment responsibilities and powers of the insurance company and, to the extent required by law, the terms of such contract(s) will be incorporated into the Agreement.

(a) The Administrator will be responsible for ensuring that the purchases conform to the requirements of the applicable Plan and any rules and policies established by the Administrator regarding the form, value, optional settlement methods and other provisions of the Contracts. The Custodian will not be responsible for the validity or proper execution of any Contract delivered to it, or any act of any person that renders the Contract void or voidable. The Custodian will not be responsible if the Contract held in the Account fails to meet the requirements of the applicable Plan, and will have no duty to inform participants of the terms and conditions of any such Contract.

(b) The Administrator will cause the applicable Plan to be designated as the sole owner of all Contracts attributable to that Plan. The Custodian will exercise its powers, rights, privileges, options and other incidents of ownership with respect to the Contracts only at the written direction of the Administrator. The Administrator will be responsible for informing the Custodian of the identity of all beneficiaries of any Contract.

(c) Unless otherwise provided for herein, the Administrator hereby instructs the Custodian to value every Contract held in the Account at \$1.00.

3.3 Proxies, Corporate Literature, Shareholder Information. The Custodian will forward all proxies and accompanying material, notices and forms related to class action lawsuits, and other information provided to and received by the Custodian that have been issued by any company, the securities of which are held in the Account, to the Administrator, to an alternative party directed by the Administrator to receive such information, or directly to the participant or beneficiary with respect to assets held in a PCRA Account as provided under Section 2.3. The Custodian will be under no duty to determine how, or if, proxies are received or voted, how or if the Account will participate in or respond to class action notices, or how or if to respond to any other such notices or materials received by the Administrator or any other party. Furthermore, the Custodian will be under no obligation to forward, retain or act upon any other corporate material received by the Account except to the extent required by law.

3.4 Products of an Affiliate. At the direction of the Administrator, the Custodian may purchase shares of regulated investment companies (or other investment vehicles) advised by the Public Company, the Broker/Dealer, the Custodian or any affiliate or subsidiary of any of them ("Affiliated Funds"), except as prohibited by law or regulation.



Notwithstanding any other provision in the Agreement to the contrary, uninvested cash pending investment or disbursement held in an account established under this Agreement may be invested in Affiliated Funds or in a liquid savings deposit account to earn interest designated by the person or entity authorized hereunder for that purpose. To the extent the Custodian is instructed to deposit uninvested cash in a deposit account, such deposits shall be made to a deposit account maintained in the banking division of Charles Schwab Bank which is insured by the Federal Deposit Insurance Corporation ("FDIC"). Upon direction to deposit such uninvested cash in a deposit account, the Custodian will automatically deposit uninvested cash deposited to, or withdrawn from, a deposit account maintained in the banking division of Charles Schwab Bank pursuant to the applicable terms of the Disclosure Statement in effect from time to time. The Custodian's obligations to invest cash in an Affiliated Fund or in a deposit account shall be limited to the terms of the Disclosure Statement in effect from time to time as directed by the person or entity authorized to provide such directions under this Agreement. Schwab Bank shall provide the Administrator a current copy of the Disclosure Statement upon request.

Affiliated Funds may not be purchased or held by the Account unless the Administrator has received disclosure concerning the Public Company's, the Broker/Dealer's, the Custodian's and/or their affiliate's and subsidiary's relationship to the Funds. Such disclosure must include an explanation of any fees paid to the Public Company, the Broker/Dealer, the Custodian and/or their affiliates and subsidiaries.

3.5 Overdrafts. Notwithstanding any other provision in this Agreement to the contrary, the Custodian will have the right, but not the responsibility to clear, or cover overdrafts incurred by the Account. In order to fulfill its obligation to clear Account overdrafts, the Custodian will request the Administrator to direct the Custodian to sell specific Account assets in an amount sufficient to cover the overdraft. If the Custodian does not receive the requested direction before the close of business on the day of its request, Custodian will have the right, but not the responsibility, to sell Account assets in an amount necessary to cover the overdraft.

In the event the Custodian determines to sell Account assets in order to cover the overdraft, the Custodian will first liquidate any available money market funds held by the Account, and to the extent such amounts are insufficient to cover the overdraft, the Custodian will liquidate other classes of Account assets in the following order until sufficient funds are generated to cover the overdraft:

- (1) Capital preservation funds
- (2) Bond investment funds
- (3) Balanced investment funds
- (4) Stock investment funds
- (5) Equities and other securities

3.6 No Duty to Inquire. All persons dealing with the Custodian are released from inquiring into the decision or authority of the Custodian and from seeing to the proper application of any monies paid or securities or other property delivered to the Custodian.

3.7 No Duty to Investigate. The Custodian will bear no liability for acting upon any instruction or document believed by it to be genuine and to be presented or signed by a party duly authorized to do



so, and the Custodian will be under no duty to make any investigation or inquiry about the correctness of such instruction or document.

3.8 Advice of Counsel. The Custodian may consult with legal counsel of its choice, including counsel designated by BENCOR, upon any question or matter arising hereunder, and the opinion of such counsel, when relied upon by the Custodian will be evidence the Custodian was acting in good faith.

3.9 Capital Preservation Vehicle. The banking department of the Custodian offers access to a money market deposit product described in 12 C.F.R. Section 204.2(d)(2) (referred to as "Schwab Bank Savings"). To the extent the Administrator desires to add Schwab Bank Savings as an option under any Plan, the Administrator will instruct the Custodian to establish a deposit account with the banking department of Charles Schwab Bank to provide access to Schwab Bank Savings. In such event, the Administrator shall instruct the Custodian to establish a Schwab Bank Savings account for the Plan with Charles Schwab Bank as the depository institution. If Schwab Bank Savings is added as an investment option under any Plan, the Administrator, through its written instruction to the Custodian, shall acknowledge receipt of and agreement to the current terms and conditions governing Schwab Bank Savings, the disclosures containing information on Schwab Bank Savings, the manner in which interest rates on Schwab Bank Savings accounts will be determined, and terms governing the frequency of interest rate changes. The Administrator will determine independently that the interest rates offered under Schwab Bank Savings and Charles Schwab Bank's interest rate determination and modification process is, in all respects, reasonable. The Administrator has the sole responsibility to determine that such interest rates are reasonable and also has the responsibility to determine that the use of Schwab Bank Savings is both prudent and proper in the context of its overall responsibility to establish investment options under any Plan. The Administrator has the sole responsibility to monitor the reasonableness of interest rates payable on Schwab Bank Savings, including all prospective interest rate changes. The Administrator shall notify the Custodian if it determines that such rates are no longer reasonable.

ARTICLE 4 - SETTLEMENT OF ACCOUNTS

4.1 Accounting Records. The Custodian will maintain accurate and detailed records of all investments, receipts, disbursements and other transactions related to the Account. The records will be available for inspection and audit at all reasonable times by BENCOR or its authorized representatives.

4.2 Custodian Reports.

(a) Within sixty (60) days following the close of each calendar quarter or the close of any other period as may be agreed upon by the Custodian and BENCOR, the Custodian will file with the Administrator a written accounting of the Account (the "Custody Account Statement") setting forth a description of all securities and other property purchased and sold, all receipts, disbursements, and other transactions effected by it during that quarter or other designated period, and listing the securities and other property held by the Custodian at the end of such quarter or other designated period, together with their then fair market values.



(b) The Administrator may approve the Custody Account Statement by written notice of approval delivered to the Custodian or by failure to deliver to the Custodian express objections to the Custody Account Statement in writing within sixty (60) days from the date upon which the Custody Account Statement was mailed or otherwise delivered to the Administrator.

(c) The Custody Account Statement will be deemed approved upon receipt by the Custodian of the Administrator's written approval of the Custody Account Statement or upon the passage of the sixty (60) day period of time, except for any matters covered by written objections that have been delivered to the Custodian by the Administrator and for which the Custodian has not given an explanation or made an adjustment satisfactory to the Administrator.

(d) If the Custody Account Statement is not settled as provided above, the Custodian or the Administrator will have the right to submit such controversy or disagreement to arbitration pursuant to Article 9.3, at the expense of the Account for a settlement of the accounting. Any determination by the arbitrator entered in such proceeding will be conclusive on all persons interested in the Account.

4.3 Valuation. Notwithstanding any other provision of this Article 4, unless the Custodian is able to obtain the value of the Account Assets, including any Alternative Investments held by the Account, from readily available public sources, as of each valuation date assigned by BENCOR, the Administrator will direct the Custodian with respect to the current fair market value of the Account Assets within the time frame requested by the Custodian, and the Custodian will, in accordance with such valuation, account for such assets and include such information in reports pursuant to Article 4.2 of this Agreement. In the event the Administrator fails to provide such direction, the Administrator directs the Custodian to engage an independent appraiser that meets the requirements of Code Section 401(a)(28)(C) to determine the current fair market value of the Account Assets. Any expenses and costs with respect to such appraisal will be paid out of the Account or, at the option of BENCOR, by BENCOR.

BENCOR acknowledges and agrees that in the event that any Account Assets, including Alternative Investments, are transferred from an account held by a prior trustee or custodian to the Account, (whether from the Broker/Dealer or an unrelated financial provider):

(1) if such assets are valued at zero, the Custodian shall use such zero valuation for such assets for all plan purposes until such time as the Administrator provides the Custodian with a replacement valuation or, at the Administrator's direction, the Custodian obtains such a replacement valuation; and

(2) if the Administrator does not provide the Custodian with a subsequent valuation direction or such subsequent valuation direction is not timely provided by the Administrator, the Custodian shall use the last valuation direction previously provided by the Administrator to the Custodian for all Plan purposes.

BENCOR further acknowledges and agrees that in no event will the Custodian be responsible for use of an updated valuation amount prior to actual receipt by the Custodian of such updated valuation information. In the event that an updated valuation amount is provided by BENCOR or the Administrator as a result of an error or inaccuracy in a prior valuation direction, BENCOR shall



compensate the Custodian based on its standard hourly rates for Extraordinary Services attributed to work that must be corrected, as defined in the Fee Schedules referenced in Article 6.2 herein.

BENOR, and not the Custodian, will be responsible and liable for the determination of whether the valuation and the valuation method are acceptable and have been conducted in accordance with applicable legal and regulatory requirements. The Custodian will not be liable for an inaccurate valuation and shall have no duty of investigation or inquiry with respect thereto, and BENCOR shall indemnify, release and hold the Custodian harmless for any losses, liabilities, claims and expenses (including attorney's fees and costs of defense) resulting from the valuation of Account Assets.

ARTICLE 5 - SERVICES BY AND BROKERAGE TRANACTED THROUGH AFFILIATES

5.1 Services by the Affiliates. The Custodian may contract or make other arrangements for the provision of services to the Account with any organizations affiliated with or subsidiaries of the Custodian, including the the Public Company and the Broker/Dealer, their respective affiliates and subsidiaries, successors and assigns, except where such arrangements are prohibited by law or regulation.

5.2 Brokerage. The Custodian is authorized to place securities orders, settle securities trades, hold securities in custody, and perform related activities on behalf of the Custody Account through or by the Broker/Dealer whenever possible unless BENCOR specifically directs Custodian to settle a trade directly with another broker/dealer. Trades and related activities transacted through the Broker/ Dealer or another broker/dealer are subject to fees and commissions established by the Broker/Dealer or other broker/dealer, which may be paid from the Custody Account or netted from the proceeds of trades. Transactions executed by the Broker/Dealer or other broker/dealer are subject to the applicable account agreement, trading rules and policies as modified or amended from time to time, together with the applicable rules, regulations, customs and usage of any exchange, market, clearing house or self-regulatory organization and applicable federal and state laws, rules and regulations. Trades may not be executed through the Broker/Dealer or other broker/dealer unless BENCOR has received disclosure concerning the relationship of the Broker/Dealer or other broker/dealer to Custodian, and fees and commissions which may be paid to the Public Company, the Broker/ Dealer, the Custodian and/or their affiliates or subsidiaries as a result of using the execution or other services of the Broker/Dealer or other broker/dealer.

5.3 Mutual Funds and Uninvested Cash. The Administrator or its authorized delegate may direct purchases of shares of regulated investment companies (or other investment vehicles) advised by affiliates of the Public Company, Broker/Dealer, or Custodian unless such investment is forbidden by law or regulation. Uninvested cash of the Custody Account will be invested as defined in this Agreement unless BENCOR specifically instructs the use of another fund or account, except where forbidden by law or regulation.

5.4 Disclosure of Information. The Custodian is authorized to disclose such information as is necessary to the operation and administration of the Account to the Public Company or any of its affiliates, and to such other persons or organizations that the Custodian determines have a legitimate business purpose for obtaining such information.



The Custodian is authorized to disclose upon request to companies whose securities are held in the Account: (1) the Plan's and/or the Employer's name and address; (2) the holdings in the Account of securities issued by the requesting company; and (3) with respect to Rule 22c-2 of the Investment Company Act of 1940, the taxpayer identification number ("TIN"), if known, of any or all Plan participant(s) that purchased, redeemed, transferred or exchanged holdings in a fund subject to Rule 22c-2 through an account maintained by the Custodian, and the amounts and dates of each purchase, redemption, transfer or exchange, and other information that may be required by such rule.

ARTICLE 6 - TAXES, EXPENSES AND COMPENSATION OF CUSTODIAN

6.1 Taxes. The Custodian will notify the Administrator of any tax levied upon or assessed against the Account of which the Custodian has knowledge. If the Custodian receives no instructions from the Administrator, the Custodian may pay the tax from the Account. If the Administrator wishes to contest the tax assessment, it will give appropriate written instructions to the Custodian. The Custodian will not be required to bring any legal actions or proceedings to contest the validity of any tax assessments unless the Custodian has been indemnified to its satisfaction against loss or expense related to such actions or proceedings, including reasonable attorney's fees.

6.2 Custodian Compensation and Expenses. BENCOR or the Administrator will remit to the Custodian quarterly the expenses of the Custodian in administering the Account and reasonable compensation for its services as Custodian.

Such expenses and compensation are paid to the Custodian and its affiliates as set forth in the Custodian's Fee Schedule. BENCOR acknowledges receipt from the Custodian of the Fee Schedule and, where applicable, the Schwab Retirement Account/Personal Choice Retirement Account® Plan Application ("Application"), the Custodian's Fee Schedule for Unitized Portfolios or any other specific fee schedules applicable to the Account ("Other Fee Schedules") prior to execution of this Agreement. BENCOR acknowledges and agrees that the amounts described in such Fee Schedule, Application and/or Other Fee Schedules, whichever it has received, are approved by it and are payable to the Custodian and that such amounts have been taken into consideration in determining the reasonableness of the amounts payable to the Custodian.

Reasonable compensation will include the float earned on uninvested cash, the reimbursement of expenses incurred by the Custodian in providing extraordinary services, and other compensation and remuneration as defined in the Fee Schedule, Application, and/or Other Fee Schedules. The Custodian reserves the right to alter this rate of compensation at any time by providing BENCOR with written notice of such change at least sixty (60) days prior to its effective date.

Reasonable expenses, including counsel, appraisal, or accounting fees, may be withdrawn from the Account unless paid by BENCOR within thirty (30) days after mailing of the written billing by the Custodian, unless earlier withdrawal of expenses from the Account is otherwise directed in writing by BENCOR. The Custodian reserves the right to charge overdraft fees and where applicable, will provide notice of such overdraft charges to the Administrator.



6.3 Additional Custodian Compensation. In addition to fees set forth elsewhere, BENCOR acknowledges that the Custodian may receive, as compensation for its services, any credit, interest or other earnings (collectively "Float") on aggregate cash balances that the Custodian has on deposit with Charles Schwab Bank or any third-party bank or other financial institution.

The Custodian has the authority to initiate investments on behalf of the Plans only upon receipt of instructions from the Administrator. Charles Schwab Bank, therefore, takes no steps to maintain full investment of cash in any Account until Charles Schwab Bank has received appropriate instructions for the investment or distribution of cash balances in such Account from the Administrator. The Custodian calculates its cash Float investment amount each business day by netting all cash activity and adjusting for cash reserved for investment or reinvestment and for cash reserved for distributions. The result is further adjusted by an additional reserve amount determined by the Custodian in its sole discretion as necessary to satisfy the cash needs of the Plans during the following day for settlement of trades and payments, which may be adjusted from time to time.

Accounts held by Custodian may have uninvested cash balances from time to time due to one or more of the following circumstances:

(a) **Incoming Cash Pending Investment ("Incoming Cash"):** Cash balances may result from the receipt of (a) Plan contributions (or other deposits) from Employers; (b) amounts transferred to Custodian from another trustee or custodian (such as due to a plan conversion or merger); (c) payments received from other parties (e.g., investment securities settlement proceeds), or (d) cash resulting from the settlement of investment sale trades, or (e) cash that is unable to be deposited due to a lack of investment direction from the participant or an Employer. The Float period begins on the date such cash is received by Custodian and ends either on the date of settlement with the issuers of subsequent investment trades initiated by Custodian at the direction of an authorized party or on the date Outgoing Cash (as described below) is generated at the direction of and authorized party. No Float is earned when the net proceeds of all sales trades in an Account are offset by the cost of all buy trades in an Account on any specific date.

(b) **Outgoing Cash Pending Clearance ("Outgoing Cash"):** Cash balances may result from the generation of checks or Automated Clearing House ("ACH") payments attributable to distribution and other payments written on an Account ("Outgoing Cash"). The Float period begins on the date such check or ACH payment is generated and ends on the date (i) the payee presents the check for payment and the check is cleared by Custodian's checking account bank, or (ii) the ACH payment is cleared (generally the next business day). Generally, no Float is earned when a distribution is made via wire transfers.

The Incoming Cash and Outgoing Cash are held subject to the earning of Float as non-interest bearing deposits by, and are commingled with the general assets of, Charles Schwab Bank. The Custodian estimates the value of Float on uninvested cash deposit balances to equal the Charles Schwab Bank's average investment portfolio yield for a given period less the cost of FDIC insurance premiums Charles Schwab Bank is required to pay on such deposits. Applicable rates and calculations of Float earned for representative periods are available upon request.



Associated Service Standards

(a) **Incoming Cash:** The Custodian credits Incoming Cash consisting of wires or ACH receipts to an Account on the business date of receipt. The Custodian credits checks deposited to an Account on the business date of receipt if the Custodian receives them by its published cash deposit cutoff deadline and on the next business day after receipt if Custodian receives them after such deadline, subject in all cases to verification and collection. The Custodian's policy is to make funds deposited by check available for use immediately upon posting to an Account. Incoming checks generally require two or three days to clear. The Custodian processes investment directives received from an authorized party on the business date of receipt if the Custodian receives them by its published trade cut-off deadlines and on the next business day after receipt if the Custodian receives them after such deadline. Trade settlement generally occurs on the next business day after trade execution for mutual funds and collective trust funds and on the third business day after trade execution for equities and other exchange-traded securities.

(b) **Outgoing Cash:** The Custodian processes Outgoing Cash within two business days after receipt of the distribution instructions from an authorized party. Outgoing checks are delivered to the U.S. postal service or other designated delivery services within twenty-four hours of when the check is issued. At the time a check is issued, cash is transferred from the Account to a Schwab Bank omnibus disbursement account.

ARTICLE 7 - RESIGNATION OR REMOVAL OF CUSTODIAN

7.1 Resignation/Removal and Replacement. The Custodian may resign as custodian hereunder or may be removed by BENCOR. This resignation or removal may be accomplished at any time upon the giving of sixty (60) days written notice to BENCOR (or less if the receiving party agrees to waive notice). Upon resignation or removal, BENCOR will appoint a successor custodian who will then succeed to all the powers and duties given to the Custodian by this Agreement. The terminating Custodian will transfer all property of the Account then held by it to such successor custodian, in accordance with the written directions of BENCOR.

If either party has given notice of termination as provided under this Agreement, and upon the expiration of the advance notice period no successor has been appointed and has accepted such appointment, the Custodian will deliver the assets of the Account Assets to BENCOR. The Custodian is authorized to reserve such sum of money as it may deem advisable for payment of its fees and expenses in connection with the settlement of its accounts or other proper Account expenses, and any balance of such reserve remaining after the payment of such fees and expenses will be paid to the successor custodian.

7.2 Settlement of Accounts. Within sixty (60) days of the transfer to the successor, the terminating Custodian will provide BENCOR with a Custody Account Statement in the form and manner prescribed for the annual Custody Account Statement in Article 4.2. Unless BENCOR files written objections with the Custodian within sixty (60) days after such Custody Account Statement has been mailed or otherwise delivered, BENCOR will be deemed to have approved the Custody Account Statement.



7.3 Termination of Liability. Upon settlement of its account and transfer of the Account to the successor custodian, all rights and privileges under the Plans and this Agreement will vest in such successor custodian, and thereafter liability of the Custodian for future action or inaction will terminate subject only to the requirement that the Custodian execute all necessary documents to transfer the Account to the successor custodian. The Custodian will not be obligated to transfer all of the assets of the Account until the Custodian is indemnified in a manner satisfactory to it for all fees and expenses reasonably anticipated to be incurred through the date of transfer.

ARTICLE 8 - TERMINATION OF CUSTODIAN AND AMENDMENT

8.1 Termination. BENCOR may terminate this Agreement upon at least sixty (60) days written notice to the Custodian. Upon such termination, the Account will be distributed by the Custodian as and when directed by BENCOR. Such termination will be effective at the end of the notice period, except that the parties may agree to an earlier termination. The Custodian's fees and costs related to termination, including costs for registering securities and other Property, generating reports and a final accounting will be paid by BENCOR or subsequently charged to the Account.

From the date of termination of the Account and until the final distribution of Account assets, the Custodian will continue to have all the powers provided under this Agreement that are necessary or desirable for the orderly liquidation and distribution of the Account.

8.2 Amendment. Except as provided for in this Agreement and the Fee Schedule, including in Article 8.1, this Agreement may be amended at any time by written amendment adopted by BENCOR and the Custodian, provided, that such amendment will not operate:

(a) To cause any part of the Account to revert to or be recoverable by any Employer or to be used for or diverted to purposes other than the exclusive benefit of participants and their beneficiaries of the Plans, except to the extent permitted by law and the Plans; or

(b) To reduce the then accrued benefits or the amounts then held for the benefit of any participant or beneficiary of the Plans.

ARTICLE 9 - MISCELLANEOUS PROVISIONS

9.1 Construction and Severability. This Agreement will be construed (where applicable) under the Code and any other applicable Federal statutes, and, to the extent not otherwise preempted, under the laws of the State of New York, and will be administered under the Code and other applicable Federal Statutes. If any provision of the Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will continue to be fully effective.

9.2 Headings. The headings in this instrument have been inserted for convenience of reference only and are to be ignored in any construction of the provisions of this Agreement.

9.3 Arbitration of Disputes. Any dispute under this Agreement will be resolved by submission of the issue to a member of the American Arbitration Association who is chosen by BENCOR and the Custodian.



If BENCOR and the Custodian cannot agree on such a choice, each will nominate a member of the American Arbitration Association, and the two nominees will then select an arbitrator. Expenses of the arbitration will be paid as decided by the arbitrator.

9.4 Entire Agreement. The Agreement constitutes the entire agreement of the parties. All previous agreements and instructions (written or oral) between BENCOR and the Custodian with respect to the Account and Account Assets are hereby superseded.

9.5 Governing Law. This Custody Agreement and Account shall be governed by and construed in accordance with the laws of New York, and all questions as to its validity will be determined in accordance with the laws of the State of New York.

9.6 Recorded Conversations. The Custodian is authorized to tape record conversations between the Custodian and persons acting on behalf of BENCOR, the Administrator, and any Employer to verify data on transactions.

9.7 Execution and Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed original, and such counterparts will constitute but one instrument that may be sufficiently evidenced by any one counterpart.

9.8 Successors and Assigns. This Agreement is not assignable by any party without the other party's prior written consent, and any attempted assignment in contravention shall be null and void. Notwithstanding the foregoing, any corporation or association (i) into which the Custodian may be merged or with which it may be consolidated, (ii) resulting from any merger, consolidation or reorganization to which the Custodian may be a party, or (iii) to which all or any part of the Custodian's fiduciary business, which includes the collective investment funds, for which the Custodian is the trustee, may be transferred, shall have all of the rights, powers and obligations of the Custodian under this Agreement, without the necessity of executing any instrument or performing any further act.

9.9 Gender. As used in this Agreement, the masculine gender will include the feminine and neuter genders and the singular will include the plural and the plural the singular, as the context requires.

9.10 Bond. The Custodian will not be required to qualify before, be appointed by, or account to any court or obtain the order or approval of any court in the exercise of any power or discretion. The Custodian will not be required to furnish bond or other security in any jurisdiction except to the extent required by law.

9.11 Taxation of Account. The Administrator is responsible for filing any and all tax returns and for paying any taxes due on income earned in the Account. If directed by the Administrator, the Custodian may provide information to assist the Administrator in preparation of tax returns; however, the responsibility for correctness and accuracy of all returns is solely that of the Administrator, and the Custodian will not be liable for the correctness and accuracy of any information provided as it relates to the application of tax law.



9.12 Extraordinary Events. The Custodian is not responsible for losses caused directly or indirectly by conditions beyond its control, including, but not limited to, war, natural disasters, government restrictions, exchange or market rulings, strikes, interruptions of communications or data processing services, or disruptions in orderly trading on any exchange or market.

9.13 Trade Notifications. BENCOR, on behalf of the Administrator, has agreed not to receive separate notifications of securities transactions and agrees that all securities transactions will be reported on Custody Account Statement. Provided, however, BENCOR has the right under applicable law to receive, at no additional cost, separate notifications of securities transactions executed by the Custodian for the Account.

9.14 Notices, Change of Address. Any notice required or permitted to be given under this Agreement will be sufficient if in writing and sent by registered mail, postage prepaid, addressed as follows:

If to BENCOR: 2 North Tamiami Trail
Suite 602
Sarasota, Florida 34236

If to the Custodian: Charles Schwab Bank
Attention: Vice President, Business Trust
211 Main St. 14th Floor
San Francisco, California 94105

or to such other address as BENCOR or the Custodian may hereafter specify in writing by providing ten days prior notice of such change to the other party. All notices, requests, demands and other communications will be in writing and will be deemed to have been duly given on the date of service, if served personally on the party to whom notice is to be given, or on the fifth day after mailing, if mailed and properly addressed.




Execution Page

The parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of September 15, 2017.

BENCOR, Inc.

Signature and Date Required

X 

Authorizing Person Signature

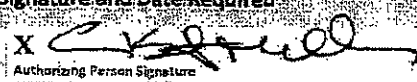
Date: 9/15/17

Print Name: Hugh Bishop

Title: President & C.E.O.

The person whose signature appears below hereby certifies that he/she is the duly elected, qualified and acting Secretary/General Partner/Managing Member/Other (as set forth below) of BENCOR, Inc. ("BENCOR") and further certifies that the person whose signature appears above is duly authorized with full power to execute, on behalf of BENCOR, this Agreement as well as all additional required account opening documents including, but not limited to, Charles Schwab Bank's New Account Setup Form.

Signature and Date Required

X 

Authorizing Person Signature


Date: 9/15/2017

Print Name: C. Kurt Miller

Title: MANAGING DIRECTOR

Charles Schwab Bank, CUSTODIAN

Signature and Date Required

X 

Authorizing Person Signature

Date: 10-27-17

Print Name: LAWRENCE BONSER

Title: VICE PRESIDENT



Palm Beach County

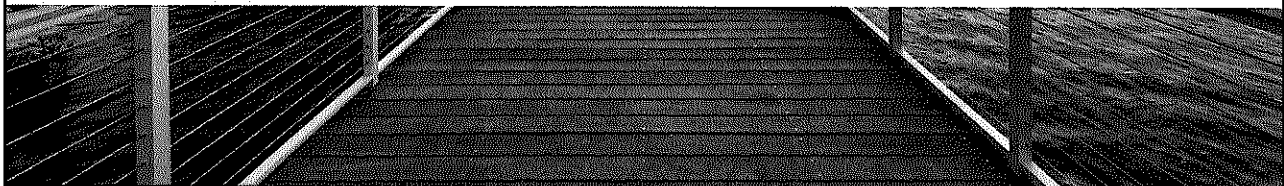
**Human Resources
Department**



Tuesday, September 17th, 2024



BENCOR 401(a) Special Pay Plan





What is a Special Pay Plan

- 401(a) plans are investment tools that are also known as Special Pay Plans (SPP) that can be customized for specific group participants. All identified group members must participate in the SPP.
- These plans are additional retirement plans that are funded by an employee's "Special Pay", which is compensation other than regular salary or wages accumulated by an employee (i.e. sick leave and/or vacation leave). Those funds can be converted to a lump-sum at separation of employment, or can be swept into the fund at specified increments at the end of a pay period or a fiscal year depending upon the design of the plan.
- Through these plans, the employer must contribute any accumulated Special Pay designated under the rules of the plan directly into the Plan. One of its' tax savings is neither the employee nor employer are subject to the 7.65% Social Security and Medicare tax on funds allocated to the SPP.
- Some Special Pay Plans are setup to include mandatory employer and employee contributions (i.e. sick leave and/or vacation leave).



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401(a) Special Pay Plan Recap

- The Board requested that staff research options to provide the County and employee tax savings via a 401(a) plan.
- Based on Board direction, staff commenced research to obtain existing contracts from other agencies.
- Staff sought legal advice for contradicting opinions and moved forward with Board direction to solicit interested vendors.
- On June 21, 2023, Selection Committee convened for 401(a) plan solicitations. The selected vendor was Bencor, Inc. Negotiations followed related to the guaranteed interest rate. It was agreed upon by all parties that the guaranteed interest rate would be 3.5% for the life of the three year contract.



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401(a) Special Pay Plan Recap

Tax Savings and Deferrals

- Permanently save FICA and Medicare Taxes
 - ❑ On \$10,000 one permanently saves \$765 (7.65%)
- Federal Income Taxes are deferred until funds are withdrawn from the Plan.
 - ❑ Without the BENCOR Plan, Federal Income Taxes will be withheld from sick pay and vacation pay distribution.
 - ❑ With the BENCOR Plan, all income taxes are deferred until funds are withdrawn from the Plan.
 - ❑ Manage payment of income taxes



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401(a) Special Pay Plan Recap

Contribution Limits for 2024

- 401(a)
 - ❑ IRS 415 Limit – accumulated leave pay is contributed up to the lesser of \$69,000 or 100% of plan year salary. If plan year salary is less than \$69,000, a different calculation will be used.
 - ❑ Employees can also fully fund their elective deferral 457(b) Plan.



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401(a) Special Pay Plan Recap

- The 401(a) allows the flexibility to carve out employee groups for inclusion into the plan. Examples of employee groups might include Directors only or all Executives.
- Plan design might also consider all exempt (salaried) employees.
- Employee groups might be categorized by pay grades or pay as well. For example, all classifications within the executive pay range or all employees earning above a certain income threshold.

NOTE: Employee groups may also consider the bargaining groups. Bargaining Units (Unions) are welcomed and encouraged to bargain for inclusion.



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Plan Design – Adoption Agreement

- Based on Board direction, Palm Beach County’s plan design is comprised of the following:
 - all non-bargaining, full time and part time employees accruing eligible sick and/or vacation leave balances;
 - all executives employees;
 - all eligible balances valued at \$2,500 or more;
 - with an Adoption Agreement effective date: January 1st (renewing every plan year on 01/01); and,
 - with an Adoption Agreement eligibility date: October 19, 2024 (two pay periods after Board approval).

Note: Bargaining Units (Unions) are welcomed and encouraged to bargain for inclusion.



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Plan Design – Adoption Agreement

- Nuances of The Plan:

- IRS rolling calendar threshold for inclusion
- IRS threshold for inclusion: Plan Year is January 1 – December 31.
- Employees must earn at least the same amount in annual earnings in order to fully benefit from the tax savings of the 401(a) plan.

Employee Mary:

- > Mary retires on 6/30 and earned \$50,000 from 01/01 – 6/30.
- > She has accumulated leave pay of \$30,000.
- > Mary is able to contribute all of her accumulated leave pay into the Plan.



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Plan Design – Adoption Agreement

- Nuances of The Plan:

- **Early Withdrawal Offset Provision Payment**
- The Board unanimously decided to offset the 10% early withdrawal penalty for those employees withdrawing under the IRS age provision thresholds.
- In recognition of certain employees incurring an additional 10% early withdrawal tax the Board mitigated the effect of such early withdrawal penalty via this Early Withdrawal Offset Provision by making a payment to such Former Employees for the difference between 10% of the contribution amount and the amount of tax savings. This generally results in a payment of up to 2.35% (10% penalty minus 7.65% previous savings on Social Security and Medicare taxes).
- Individuals who have met their FICA salary limit before separating from employment would receive an 8.55% (10% penalty minus 1.45% savings) payment for amounts over the FICA limit. Such payment will be issued as a “vendor payment” and reported on form 1099-M.



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➤ Plan Design – Adoption Agreement

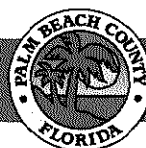
Staff respectfully requests the approval of the Adoption Agreement design in order to go live with the plan on October 19, 2024 (two pay periods after Board approval).



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➤ Thank you



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THANK YOU!

CONTACT INFORMATION

Wayne Condry

561-616-6888

wcondry@pbc.gov

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