

**457(b) Supplemental Retirement Program
Plan Document**



Effective: November 8, 2011
As Amended: September 24, 2020

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MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM OF MICHIGAN 457(b) SUPPLEMENTAL RETIREMENT PROGRAM PLAN DOCUMENT

The Municipal Employees' Retirement System of Michigan hereby establishes a deferred compensation plan and trust known as the "457 Supplemental Retirement Program Plan and Trust" ("Plan"), the purpose of which is to provide benefits under the Plan to Participants and Beneficiaries upon Retirement, Termination, disability, or death, upon the terms and conditions, and subject to the limitations contained in the Plan. The Plan has been created for the exclusive benefit of eligible Participants and their Beneficiaries of any Employer electing to participate in the Plan. The Plan is intended to qualify under Code Section 457(b) and the Plan is intended to be tax-exempt under Code Section 501(a). The Plan was effective November 8, 2011, and has since been amended on July 21, 2016, March 15, 2018, February 28, 2019, June 27, 2019, December 5, 2019, April 30, 2020, and September 24, 2020.

The Plan consists of the provisions set forth in this Master Plan Document, along with the provisions set forth in the Adoption Forms and the resolution of any Participating Employer, and any amendments thereto.

Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between the Participant and the Employer, nor shall it be deemed to give a Participant any right to be retained in the employ of or under contract to the Employer. Nothing herein shall be construed to modify the terms of any employment contract or agreement between a Participant and the Employer; rather, the Plan is intended to be a supplement thereto.

ARTICLE I - DEFINITIONS

- 1.1. **"Account"** means the following separate bookkeeping accounts maintained for a Participant by the Administrator including:
 - (a) **"Pre-Tax Contribution Account"** means the account maintained to reflect the Participant's Annual Deferrals and Employer Contributions pursuant to Section 8.1, the gains or losses in the market value attributable to the investment of the Participant's Deferred Compensation, any distribution made to the Participant or the Participant's Beneficiary, and any fees or expenses charged against such Participant's Deferred Compensation account balance.
 - (b) **"Roth Contribution Account"** means the account maintained to reflect the Participant's Roth Contributions, the gains or losses in the market value attributable to the investment of the Participant's Roth Contributions, any distribution made to the Participant or the Participant's Beneficiary, and any fees or expenses charged against such Participant's Roth Contribution Account balance.
 - (c) **"Rollover Account"** means the account maintained to reflect the interest of the Participant attributable to his or her non-Roth

Rollover Contributions under Article XVI and the gains or losses in the market value attributable to the investment of the non-Roth Rollover Contribution, any distribution made to the Participant or the Participant's Beneficiary, and any fees or expenses charged against such Participant's non-Roth Rollover Contribution account balance.

- (d) **“Roth Rollover Account”** means the account maintained to reflect the interest of the Participant attributable to his or her designated Roth Rollover or Conversion Contributions under Article XVI and the gains or losses in the market value attributable to the investment of the Participant's Roth Rollover or Conversion Contributions, any distribution made to the Participant or the Participant's Beneficiary, and any fees or expenses charged against such Participant's Roth Rollover Account balance.
- (e) **“Employer Contribution Account,”** means the account maintained to reflect the interest of the Participant attributable to his or her Employer Contributions, if any, made pursuant to the Adoption Forms, the gains or losses in the market value attributable to the investment of the Employer Contribution for the Participant, any distribution made to the Participant or the Participant's Beneficiary, and any fees or expenses charged against such Employer Contribution account balance for the Participant.

References to “Account” shall also include a Participant's Deemed IRAs which include the Deemed Traditional IRA and/or Deemed Roth IRA accounts, but only to the extent the reference is not in contradiction to Article XXV.

- 1.2. **“Administrator”** means MERS, and includes the Program Administrator with regard to functions delegated by the Board to the Program Administrator. Where specific duties are to be performed by the Program Administrator, that term will be used instead of “Administrator.”
- 1.3. **“Adoption Forms”** means the resolution and form(s) required by the Program Administrator for adoption of this Plan by a Participating Employer.
- 1.4. **“Annual Deferral”** means the amount of Compensation deferred by a Participant into a Pre- Tax Contribution Account or a Roth Contribution Account in any year pursuant to Articles IV, V and VI.
- 1.5. **“Applicable Form”** means the appropriate form as designated and furnished by the Administrator to make an election or provide a notice as required by the Plan. If a written election or consent is not specifically

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required by the Code, the Administrator may prescribe a verbal, electronic or telephonic instruction in lieu of or in addition to a written form.

- 1.6. “**Beneficiary**” means the person or persons designated by a Participant to receive any benefit payable upon the Participant’s death as determined under Section 12.3.
- 1.7. “**Board**” means the Municipal Employees’ Retirement Board.
- 1.8. “**Code**” means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.
- 1.9. “**Compensation**” means an Employee’s Compensation within the meaning of Code Section 415(c)(3) required to be reported as actual wages in Box 1 of Form W-2 for a year for services to the Employer plus any compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer Compensation under Article IV) that is actually paid or includable in gross income during the calendar year. Compensation also includes certain additional amounts if paid no later than 2½ months after severance from employment or the end of the calendar year that includes a Participant’s severance from employment that, absent a severance from employment, would have been paid to the Participant while the Participant continued in employment with the Participating Employer.

For purposes of computing contributions or benefits, the employer shall elect in the Adoption Agreement to define compensation as:

- (i) Medicare taxable wages reported by the employer on the participant’s federal form W-2 wage and tax statement; or
- (ii) Wages within the meaning of section 3401(a) of the IRC and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under sections 6041(d), 6051(a)(3) and 6052 of the IRC and will be determined without regard to any rules under section 3401(a) of the IRC that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2) of the IRC). Compensation will also include amounts that would otherwise be included in compensation but for an election under sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the IRC; any elective amounts that are not includible in the gross income of the participant by reason of section 132(f)(4) of the IRC; and, any pre-tax contributions (excluding direct employer

contributions) to an integral part trust of the employer providing retiree health care benefits; or

- (iii) The salary or wages paid for personal services rendered to the member's participating municipality or court while a member of the Retirement System, including each of the following:
 - (a) Longevity pay, overtime pay, and shift differentials;
 - (b) Pay for periods of absence from work by reason of vacation, holiday, and sickness;
 - (c) Deferred compensation amounts under eligible deferred compensation programs and premiums for annuities and permanent life insurance policies that are transferred to the ownership of the member upon retirement;
 - (d) Workers' compensation weekly benefits if the participating municipality or court reports the workers' compensation benefit to the Retirement System and the payments are higher than regular earnings;
 - (e) A member's pre-tax contributions to a plan established under 125 of the IRC;
 - (f) Transcript fees paid to a court reporter, net of expenses, for performing services at the request of the participating municipality or court that employs the court reporter;
 - (g) A car allowance to the extent taxable on the member's W-2;
 - (h) Short term disability or long term disability benefit payments if the participating municipality or court reports the payments to the Retirement System;
 - (i) Payments available to employees for achievement of established annual (or similar period) performance goals in the form of variable compensation (over base wages), merit compensation, or similar compensation;
 - (j) Payments available to employees for attainment of educational degrees from an accredited college or university (associate, bachelor, or higher), or for attainment, maintenance or acquisition of job-related certification; and
 - (k) Lump sum payments of included compensation to the extent that such payments are attributable to the member's personal service rendered.

but excluding each of the following:

- (l) Remuneration or reimbursement not specifically described in this subsection or recognized by the Board, such as allowances for clothing, equipment, cleaning, and travel;
- (m) Reimbursement of expenses;
- (n) Bonus payments, except as provided under subsection (3)(iii)(i) or (j);
- (o) Termination pay;
- (p) Severance pay;
- (q) Payments in consideration of unused sick leave;
- (r) The value of fringe benefits; and
- (s) Items of remuneration that are the basis of a potential or actual benefit from another retirement program.

A participating municipality or court may elect to exclude one or more of the items of compensation listed in paragraphs (iii)(a) through (l) in its Adoption Agreement at the time of MERS participation, which shall be uniformly applicable to all members employed by the participating municipality or court who are covered by the same benefit program coverage classification. In the absence of any such election, compensation shall be determined in accordance with paragraphs (iii)(a) through (s).

- 1.10. **“Deemed IRA”** means a Deemed Roth IRA and/or a Deemed Traditional IRA.
- 1.11. **“Deemed Roth IRA”** means an individual retirement account described in Code § 408A maintained under the Plan on behalf of a Participant or Beneficiary.
- 1.12. **“Deemed Traditional IRA”** means an individual retirement account described in Code § 408 maintained under the Plan on behalf of a Participant or Beneficiary.
- 1.13. **“Deferred Compensation”** means the amount of Includible Compensation otherwise payable to the Participant which the Participant and the Employer mutually agree to defer hereunder, any amount credited to a Participant’s Account by reason for a transfer under Article XVIII, a rollover under Article XVI, or any other amount which the Employer agrees to credit to a Participant’s Account.

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- 1.14. **“Disability”** or **“Disabled”** means a total and permanent disability determined as follows: (i) by the Social Security Administration for a Participant who is covered by Social Security; or (ii) by the Employer, for a Participant who is not covered by Social Security. With respect to (ii), the Employer shall use the definition of disability found in Code Section 72(m)(7).
- 1.15. **“Eligible Employee”** means an Employee who is eligible to participate in the Plan as determined by the Employer in the Adoption Forms. In designating Eligible Employees, the Participating Employer may designate that all Employees (including elected or appointed members of the Governing Body), may participate, or may designate that all Employees, other than those specifically excluded, may participate. Except with respect to Deemed IRAs under Article XXV, a Participating Employer may also specify that independent contractors may participate in the Plan.
- 1.16. **“Employee”** means any common law employee of an Employer and includes elected and appointed officials.
- 1.17. **“Employee Contribution”** means the amount of Compensation deferred pursuant to an Employee’s Payroll/Investment Election Form as provided under Article IV.
- 1.18. **“Employer”** means any “municipality” (as defined in section 2b(2) of the Municipal Employees Retirement Act of 1984, MCL 38.1502b(2)), or “court” (circuit, district or probate court as defined in section 2a(4) – (6); MCL 38.1502a(4) – (6)) that is located within the State of Michigan.
- 1.19. **“Employer Contribution”** means Matching Contributions and Non-Matching Contributions which may be provided under the Adoption Forms and made by a Participating Employer for a Participant pursuant to Article V.
- 1.20. **“Forfeiture Account”** means the account maintained by the Administrator to which forfeited amounts under the Plan shall be credited.
- 1.21. **“Governing Body”** means the governmental entity authorized by law to act for the Employer and adopt this Plan through a resolution and the Adoption Forms.
- 1.22. **“Includible Compensation”** means an Employee’s Compensation within the meaning of Code Section 415(c)(3) required to be reported as actual wages in Box 1 of Form W-2 for a year for services to the Employer plus any compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer Compensation under Article IV) that is actually paid or includable in gross income during the calendar year. Compensation also includes certain additional amounts if paid no later than 2½ months after severance from employment or the end of the calendar year that includes a Participant’s severance from

employment that, absent a severance from employment, would have been paid to the Participant while the Participant continued in employment with the Participating Employer. Such additional amounts include regular compensation for services during the Participant's regular working hours or compensation for services outside the Participant's regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and, payments 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.

An Employee who is in qualified military service (within the meaning of Code Section 414(u)(1)) shall be treated as receiving compensation from the Participating Employer during such period of qualified military service equal to (i) the compensation the Employee would have received during such period if the Employee were not in qualified military service, determined based on the rate of pay the Employee would have received from the Participating Employer but for the absence during the period of qualified military service, or (ii) if the compensation the Employee would have received during such period was not reasonably certain, the Employee's average compensation from the Participating Employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

Compensation of each Participant shall not exceed the applicable limit established by Code Section 401(a)(17) as of the first day of the limitation year, as increased for the Cost of Living Adjustment (\$245,000 for 2010 and 2011, \$250,000 for 2012). The Cost of Living Adjustment in effect for a limitation year applies to compensation for the Plan Year that begins with or within such limitation year.

- 1.23. "**Independent Contractor**" means an individual who is not an Eligible Employee and who performs service for the Participating Employer. If the Participating Employer allows participation by an Independent Contractor under the Adoption Forms, the Participating Employer must assure that proper procedures are in place for Independent Contractors to make deferrals under the Plan.
- 1.24. "**Investment Fund**" means an investment fund which forms part of the Trust as established by the Board at the direction of the Administrator.
- 1.25. "**Matching Contribution**" means the matching contribution made by the Participating Employer as determined under the Adoption Forms and made pursuant to Article V.
- 1.26. "**MERS**" means the Municipal Employees' Retirement System of Michigan.

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- 1.27. **“Non-Matching Contribution”** means the non-matching contribution made by the Participating Employer as determined under the Adoption Forms and made pursuant to Article V.
- 1.28. **“Normal Retirement Age”** means the age selected by a Participant on the applicable form approved by the Employer that fixes the eligibility period for utilizing the catch-up limitation under Section 6.3. The Normal Retirement Age selected by a Participant may be the earliest age that the Participant would become eligible to retire and receive unreduced benefits as a member of the defined benefit, defined contribution (money purchase plan), or hybrid pension plan of the Participant’s Employer, and not later than age 70½ (if the Participant attains age 70½ on or before December 31, 2019), or age 72 (if the Participant attains age 70½ after December 31, 2019). In the absence of an Employer defined benefit, defined contribution (money purchase plan), or hybrid pension plan, Normal Retirement Age shall be 60.

In the event a Participant is a qualified police or firefighter (as defined under Section 415(b)(2) (H)(ii)(I) of the Code), a Normal Retirement Age may be designated that is not earlier than age 40 or later than age 70½ (if the Participant attains age 70½ on or before December 31, 2019), or age 72 (if the Participant attains age 70½ after December 31, 2019).

A Participant may not have more than one Normal Retirement Age under all of the eligible deferred compensation plans offered by a Participating Employer. A Participant’s Normal Retirement Age established for catch-up does not have any bearing on the age at which the Participant actually retires.

- 1.29. **“Participant”** means an Eligible Employee who has joined the Plan pursuant to the requirements under Article III. The term Participant includes an Employee or former Employee of the Employer who has not yet received all of the payments of benefits to which he/she is entitled under the Plan or, for purposes of incoming rollovers and incoming plan to plan transfers only, any other eligible 457(b) plan of the Participating Employer. Only individuals who perform services for the Employer as an Employee may defer Compensation under the Plan. In addition, a “Participant” for purposes of the Deemed IRAs means any individual who is or was employed by an Employer as defined in Section 1.18 of this Article I, and who establishes a Deemed IRA described herein. A Participant shall continue to be a participant until all benefits to which he or she is entitled under Article XXV have been paid.

A Beneficiary shall be treated as a Participant with respect to an account established for the Beneficiary after the death of the Participant and an alternate payee shall be treated as a Participant with respect to a separate

account established pursuant to a Plan-Approved Domestic Relations Order.

- 1.30. **“Participating Employer”** means any Employer who elects to participate in the Plan pursuant to Article II with respect to the Eligible Employees of the Employer.
- 1.31. **“Payroll/Investment Election Form”** means the Applicable Form completed by an Employee to participate in the Plan and defer Compensation.
- 1.32. **“Payroll Period”** is the time period specified by the Participating Employer in the Adoption Forms, which must be the actual period during which amounts deferred would otherwise have been paid to the participant or the month during which amounts deferred would otherwise have been paid to the participant.
- 1.33. **“Plan Year”** means the calendar year.
- 1.34. **“Program Administrator”** means any person or organization appointed by the Board to perform service and administrative functions delegated by the Board.
- 1.35. **“Qualified Distribution”** means a distribution from a Roth Contribution Account or a Deemed Roth IRA after the Participant has satisfied a five year holding period and has attained age 59 ½, died, or become disabled within the meaning of Code Section 72(m)(7), in accordance with Code Section 402A(d). The five-year holding period is the period of five consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a designed Roth Contribution under the Plan or to another retirement plan which amount was directly rolled over to the Plan or first makes a Voluntary Employee Contribution to a Deemed Roth IRA pursuant to Article XXV or a contribution to another Roth IRA which amount was rolled over to a Deemed Roth IRA, and ends on the last day of the fifth consecutive taxable year.
- 1.36. **“Roth Contribution”** means amounts contributed by the Employer at the election of a Participant that (i) have been irrevocably designated by the Participant as Roth deferrals pursuant to Article IV, and (ii) treated by the Employer as gross income at the time the Participant would have received that amount in cash if the Participant had not made such election.
- 1.37. **“Severance from Employment”** means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer. A Participant shall be deemed to have severed employment with the Participating Employer for purposes of the Plan when, in accordance with the established personnel practices of the Participating Employer, the employment relationship is considered actually terminated. If a Participant

has not been terminated, but the Participant has not performed services for the Participating Employer for a period of six (6) consecutive months and the Participant is not on a paid leave of absence, the Participant shall be deemed Severed from Employment for purposes of this Plan at the end of the six (6) month period. An independent contractor is considered to have separated from service of their Employer upon the expiration of the contract(s) under which services are performed for the Employer, if the expiration constitutes a good faith and complete termination of the contractual relationship, with no anticipation by the Employer of either a renewal of a contractual relationship or the employment of the independent contractor. Whether a Separation from Service has occurred shall be determined in accordance with this definition and the provisions of Treasury Regulation § 1.457-6(b).

- 1.38. **“State”** means the State of Michigan.
- 1.39. **“Trust”** means the trust established by the Board in accordance with this Plan which satisfies the requirements of Code § 457(g) (including a custodial account, annuity contract, or contract that satisfies the requirements of Code § 457(g)(3)), and with its authority under the Municipal Employees Retirement Act of 1984, as amended; pursuant to a written agreement that constitutes a valid trust under the law of Michigan and is intended to satisfy the requirements for a written agreement under Treasury Regulation § 1.457-8(a)(2).
- 1.40. **“Trustee”** means the Trustee or any successor trustees designated and appointed by the Board and includes a custodian under a custodial account or contract pursuant to Code § 457(g)(3). With respect to Deemed IRAs held in trust pursuant to Article XXV, the Trustee designated and appointed by the Board shall be a bank, as defined in Code § 408(n), or an entity that has received approval to serve as a nonbank trustee or nonbank custodian pursuant to Treasury Regulation § 1.408-2(e).
- 1.41. **“Vesting”** means that a benefit of the Participant is no longer subject to a substantial risk of forfeiture in accordance with Code Section 457.
- 1.42. **Rules of Construction.** Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

ARTICLE II - PARTICIPATION BY EMPLOYERS

- 2.1. **Adoption by Employer.** Any Employer may make the Plan available to its Employees if the Governing Body of the Employer passes a resolution in the form provided by the Program Administrator formally adopting this Plan for its Employees and executes the form or forms required by the Program Administrator for adoption (“Adoption Forms”).
- 2.2. **Other 457(b) Plan Participation.** All eligible plans of a Participating Employer are considered to be a single plan for purposes of compliance with Code Section 457(b). The Participating Employer will be responsible for ensuring that all of its arrangements, treated as a single plan, comply with the applicable requirements of Code Section 457 and applicable Treasury Regulations, including, but not limited to, the coordination of limitations on Annual Deferrals (including the basic limit, age 50 catch-up limit, and special 457 catch-up limit under Article VI), corrections of excess deferrals (Section 6.7), and plan-to-plan transfers (Article XVIII).
- 2.3. **Remittance of Contributions.** All amounts of Compensation deferred under the Plan shall be transferred by the Participating Employers to the Trust within a period that is reasonable for the proper administration of the Plan, as described in this Section. Contributions shall first be remitted to the Trust only after the Employer’s Adoption Forms are approved by the Program Administrator. Under normal circumstances, contributions under the Plan shall be transferred by the Participating Employer to the Trust no later than fifteen (15) business days after the Payroll Period specified in Adoption Forms or after the end of the Plan Year with respect to Employer Contributions made on a Plan Year basis.
- 2.4. **Delinquent Contributions.** It is the Participating Employer’s responsibility to correctly calculate and remit the appropriate contributions. The Program Administrator reserves the right to give notice to the highest elected official, the designated representative of the Employer and/or the Eligible Employees of the delinquent Participating Employer in the event it comes to the Program Administrator’s attention that contributions are not being remitted in a timely manner.

Neither MERS, the Board, nor the Program Administrator have any liability for the delinquency of a Participating Employer.

ARTICLE III - ELIGIBLE EMPLOYEE PARTICIPATION

- 3.1. **Participation Procedure.** Only Eligible Employees as defined by the Adoption Forms may be Participants in the Plan. The Program Administrator shall prescribe the enrollment form or method for Eligible Employees to become Participants.

Notwithstanding the preceding, an Employee may become a Participant in the Plan with respect to Deemed IRAs pursuant to Article XXV. The Program Administrator shall prescribe the enrollment form or method for such Employees to become Participants with respect to Deemed IRAs.

- 3.2. **Cessation of Plan Participation.** An Employee or former Employee, Beneficiary, or alternate payee shall cease to be a Participant on the distribution and/or forfeiture of the Participant's entire interest in the Plan.

ARTICLE IV - ELECTION TO DEFER COMPENSATION

4.1. **Participation and Deferral Election Rules.**

- (a) **Initial Participation.** A portion of an Employee's Compensation shall be deferred for any calendar month only if the Employee enters into a Payroll/Investment Election Form prior to the beginning of the month in which the compensation is paid or made available. Upon executing a Payroll/Investment Election Form, an Employee agrees to have Compensation for each pay period deferred by the amount specified in the Payroll/Investment Election Form. A new Employee may defer Compensation in the calendar month during which the Participant first becomes an Employee if the Employee enters into a Payroll/Investment Election Form providing for the deferral on or before the first day on which the Participant performs services for the Employer.
- (b) **Election Required for Participation.** An Employee may elect to become a Participant by executing a Payroll/Investment Election Form to defer a portion of his or her Compensation (and have that amount contributed as an Annual Deferral on his or her behalf) and filing it with the Administrator. This participation election shall be made on the Payroll/Investment Election Form provided by the Program Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The participation election (whether on one form or multiple forms) shall also include designation of investment funds and a designation of Beneficiary. An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a Payroll/Investment Election Form. Any such election shall remain in effect until a new election is filed.
- (c) **Deferral of Accumulated Sick Pay, Vacation Pay, or Back Pay.** In general, an Employee may make a separate election to defer accumulated sick pay, vacation pay or back pay only if the Employee enters into a Payroll/Investment Election Form prior to the beginning of the month in which such amounts would otherwise be paid or made available to the Employee and the participant is an

Employee in that month. However, if an Eligible Employee is retiring or otherwise having a Severance from Employment during a month, the Eligible Employee may elect to defer accumulated sick pay, vacation pay or back pay if such amounts would otherwise be paid or made available before the Employee has a Severance from Employment and the Employee enters into a Payroll/Investment Election Form providing for deferral of such amounts prior to the date such amounts would be paid. This paragraph shall apply only to the extent the Participant is entitled to receive a cash payment from the Participating Employer for accumulated sick pay, vacation pay, or back pay. This paragraph shall not be interpreted to establish any entitlement to sick pay, vacation pay, or back pay, not otherwise available under the Participating Employer's policies, rules, and procedures.

- (d) **Roth Deferrals.** If elected in the Adoption Forms, a Participant may designate at the time of the deferral election that all or a portion of the Annual Deferral be made to the Roth Contribution Account instead of the Pre-Tax Contribution Account.

4.2. **Protection of Person Who Serves in a Uniformed Service.** An Employee who is on leave of absence or whose employment is interrupted by qualified military service under Section 414(u) (1) of the Code may elect to contribute additional Deferred Compensation upon resumption of employment with the Employer. The deferral amount shall not exceed the maximum amount that the Employee could have elected during that period if the Employee's employment had continued without interrupted leave. If the compensation the Employee would have received during such period is not reasonably certain, the compensation shall be the Employee's average compensation from the Employer during the twelve month period immediately preceding the leave (or if shorter, the period of employment immediately preceding the leave). This right applies for five years following the resumption of employment, or if sooner, for a period equal to three times the period of the interrupted leave.

4.3. **Eligible Automatic Contribution Arrangement ("EACA").** If the Employer has elected to participate in EACA by executing the form or forms provided by the Program Administrator, the provisions of this Section shall apply for the Plan Year and, to the extent that any other provision of the Plan is inconsistent with the provisions of this Section, the provisions of this Section shall govern.

- (a) **Definitions.** For purposes of this Section 4.3 the following definitions apply:

- (1) **"EACA"** is an automatic contribution arrangement that satisfies the uniformity requirement in Section 4.3(c) of this

Article IV and the notice requirement in Section 4.3(d) of this Article IV.

- (2) **“Automatic Contribution Arrangement”** is an arrangement under which, in the absence of an affirmative election by a Covered Employee, a certain percentage of compensation will be withheld from the Covered Employee’s pay and contributed to a Participant’s Pre-Tax Contribution Account under the Plan as an Employee Contribution.
 - (3) **“Covered Employee”** is a Plan participant identified in the Adoption Forms as being covered under the EACA.
 - (4) **“Default Elective Deferrals”** are the Employee Contributions contributed to the Plan under the EACA to the Pre-Tax Contribution Account on behalf of Covered Employees who do not have an affirmative election in effect regarding an Employee Contribution.
 - (5) **“Default Percentage”** is the percentage of a Covered Employee’s compensation contributed to the Participant’s Pre-Tax Contribution Account under the Plan as a Default Elective Deferral for the Plan Year. The Default Percentage is specified in the Adoption Forms.
- (b) **Default Elective Deferrals.** Default Elective Contributions will be made on behalf of Covered Employees who do not have an affirmative election in effect regarding Employee Contributions. The amount of Default Elective Deferrals made for a Covered Employee each Payroll Period is equal to the Default Percentage specified in the Adoption Forms multiplied by the Covered Employee’s Compensation for that Payroll Period. If the Employer has so elected in the Adoption Forms, a Covered Employee’s Default Percentage will increase by a designated percentage point or points each Plan Year, beginning with the second Plan Year that begins after the Default Percentage first applies to the Covered Employee. The increase will be effective beginning with the first Payroll Period that begins in such Plan Year or, if elected by the Employer in the Adoption Forms, the first Payroll Period in such Plan Year that begins on or after the date specified in the Adoption Forms.
- (c) **Uniformity Requirement.** If the Employer has elected an increasing Default Percentage in the Adoption Forms, the same percentage of compensation will be withheld as Default Elective Deferrals from all Covered Employees subject to the Default Percentage. However, Default Elective Deferrals will be reduced or

stopped to meet the limitations under Code Sections 401(a)(17), 402(g), and 415.

- (d) **Notice Requirements.** A Covered Employee will have a reasonable opportunity, after receipt of the notice described below, to make an affirmative election regarding Employee Contributions (either to have no Employee Contributions made or to have a different amount of Employee Contributions made) before Default Elective Deferrals are made on the Covered Employee's behalf. Default Elective Deferrals being made on behalf of a Covered Employee will cease as soon as administratively feasible after the Covered Employee makes an affirmative election.
- (1) At least 30 days, but not more than 90 days, before the beginning of the Plan Year, the Employer will provide each Covered Employee a comprehensive notice of the Covered Employee's rights and obligations under the EACA, written in a manner calculated to be understood by the average Covered Employee. If an employee becomes a Covered Employee after the 90th day before the beginning of the Plan Year and does not receive the notice for that reason, the notice will be provided no more than 90 days before the employee becomes a Covered Employee but not later than the date the employee becomes a Covered Employee.
- (2) The notice must accurately describe:
- (A) The amount of Default Elective Deferrals that will be made on the Covered Employee's behalf in the absence of an affirmative election;
- (B) The Covered Employee's right to elect to have no Employee Contributions made on his or her behalf or to have a different amount of Employee Contributions made;
- (C) How Default Elective Deferrals will be invested in the absence of the Covered Employee's investment instructions; and
- (D) The Covered Employee's right to make a withdrawal of Default Elective Deferrals and the procedures for making such a withdrawal.
- (e) **Withdrawal of Default Elective Deferrals.**
- (1) No later than 90 days after Default Elective Deferrals are first withheld from a Covered Employee's pay, the Covered

Employee may request a distribution of his or her Default Elective Deferrals under this Section 4.3(e).

- (2) The amount to be distributed from the Plan upon the Covered Employee's request is equal to the amount of Default Elective Deferrals made through the earlier of (i) the pay date for the second Payroll Period that begins after the Covered Employee's withdrawal request and (ii) the first pay date that occurs after 30 days after the Covered Employee's request, plus attributable earnings through the date of distribution. Any fee charged to the Covered Employee for the withdrawal may not be greater than any other fee charged for a cash distribution.
 - (3) Unless the Covered Employee affirmatively elects otherwise, any withdrawal request will be treated as an affirmative election to stop having Employee Contributions made on the Covered Employee's behalf as of the date specified in Section 4.3(e)(2) above.
 - (4) Default Elective Deferrals distributed pursuant to this Section 4.3(e) are not counted towards the dollar limitation on Annual Deferrals contained in Section 6.1 of Article VI. Matching Contributions that might otherwise be allocated to a Covered Employee's account on behalf of Default Elective Deferrals will not be allocated to the extent the Covered Employee withdraws such Elective Deferrals pursuant to this Section 4.3(e) and any Matching Contributions already made on account of Default Elective Deferrals that are later withdrawn pursuant to this Section 4.3(e) will be forfeited.
- 4.4. **Amendment of Annual Deferrals Election.** Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Annual Deferrals, his or her investment direction and his or her designated Beneficiary, on an Applicable Form in accordance with procedures established by the Program Administrator. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as of the first day of the next following month in which the compensation is paid or made available or as soon as administratively practicable if later. A change in the investment direction shall take effect prospectively only and shall be effective on a date consistent with the rules and specification of the investment funds. A change in the Beneficiary designation shall take effect when the election is accepted by the Program Administrator.
- 4.5. **Information Provided by the Participant.** Each Employee enrolling in the Plan should provide to the Program Administrator at the time of initial

enrollment, and later if there are any changes, any information necessary or advisable for the Program Administrator to administer the plan.

- 4.6. **Effective Date of Deferrals.** In all cases, a deferral shall be considered effective as of the date the Employer withholds the Annual Deferral from the Participant's pay.

ARTICLE V - EMPLOYER CONTRIBUTIONS

- 5.1. **Employer Contributions.** A Participating Employer may provide for Employer Matching and/ or Non-Matching Contributions to the Plan in its Adoption Forms. Employer Contributions shall be made to the Plan in accordance with this Article, Article VI, and the Adoption Forms.
- (a) **Additional Eligibility Requirements.** A Participating Employer may prescribe in the Adoption Forms a minimum number of hours that an Eligible Employee must be scheduled and normally work in order to receive an allocation of Employer Contributions under the Plan. It is the Participating Employer's responsibility to monitor this requirement and to report to the Program Administrator a change in Employee eligibility. Additionally, a Participating Employer may establish under the Addendum a waiting period before an Eligible Employee may become eligible to receive an Employer Contribution under the Plan. The waiting period may consist of a minimum period of service (not more than twelve (12) months), and the Employer may choose whether to give credit for service prior to adoption of the Plan and whether to add together different periods of service, or the Employer may specify a different waiting period.
- (b) **Designation of Type of Contribution.** A Participating Employer shall specify in the Adoption Forms whether it will make Matching Contributions and/or non-Matching Contributions. Matching Contributions shall be made to match all or a portion of the Participant's Compensation deferred under the Plan, in accordance with the formula and method specified by the Participating Employer in the Adoption Forms. Non-Matching Contributions are not tied to Participant contributions to the Plan and shall be made in accordance with the formula and method specified by the Participating Employer in the Adoption Forms.
- (c) **Effective Date of Contributions.** The amount and method of calculating contributions continues in effect from Plan Year to Plan Year until amended or repealed by the Governing Body or until the Participating Employer's participation in the Plan is terminated.
- (d) **Investment Options.** In accordance with procedures established by the Program Administrator, Employer Matching and/or Non-

Matching Contributions shall be invested in the same manner as the Participant's Employee Contributions.

- 5.2. **Matching Contributions.** If the Adoption Forms provide for Matching Contributions, the Governing Body shall determine and specify the formula for calculating the Matching Contributions, which may be all or a specified portion of a Participant's Compensation, to the extent deferred to the Plan. The Employer may calculate matching contributions based on (i) a percentage of the Compensation deferred by the Employee to the Plan, with no cap, a flat dollar cap, or a cap equal to a percentage of Compensation, (ii) a flat dollar match per payroll period, or (iii) any other specified formula in the Addendum.
- 5.3. **Eligibility for Matching Contributions.**
- (a) In the Adoption Forms, the Participating Employer may establish different classes of Participants who are eligible or ineligible to receive Matching Contributions. The Employer may also establish different Matching Contribution amounts or formulas applicable to different classes of Eligible Employees. If the Adoption Forms provide for Matching Contributions, a Participant shall be eligible for Matching Contributions for any Payroll Period only if the Participant meets the conditions set forth in the Adoption Forms.
 - (b) In no event shall a Participant receive any Matching Contributions for any Payroll Period for which the Participant does not have an effective payroll deferral to the Plan for that Payroll Period.
- 5.4. **Non-Matching Contributions.** If the Adoption Forms provide for Non-Matching Contributions, the Governing Body shall determine and specify the formula for calculating the Non-Matching Contributions, which may be a fixed amount or a specified portion of a Participant's Compensation. The Employer may make Non-Matching Contributions as (i) a one-time year end contribution (either a flat dollar amount or percentage of Compensation), (ii) a percentage or flat dollar amount per payroll period, or (iii) any other specified formula in the Adoption Forms.
- 5.5. **Eligibility for Non-Matching Contributions.** In the Adoption Forms, the Participating Employer may establish different classes of Participants who are eligible or ineligible to receive Non-Matching Contributions. The Employer may also establish different Non-Matching Contribution amounts or formulas applicable to different classes of Eligible Employees. If the Adoption Forms provide for Employer Non-Matching Contributions, a Participant shall be eligible for Non-Matching Contributions only if the Participant meets the conditions set forth in the Adoption Forms.

- 5.6. **Changes in Employer Contributions.** A Participating Employer may adjust the amount or method of Employer Contributions throughout the Plan Year by adopting a resolution to amend its Adoption Forms in accordance with Section 21.3. The resolution must be sent to the Program Administrator, who shall approve or disapprove the amendment and, if approved, establish the effective date of any change to the Employer Contributions.

ARTICLE VI - LIMITATIONS ON DEFERRALS

- 6.1. **Basic Annual Limitation.** The maximum amount of the Annual Deferral under the Plan for any calendar year shall not exceed the lesser of (i) the Applicable Dollar Amount, or (ii) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount established under Code Section 457(e)(15), as adjusted pursuant to Treasury Regulation 1.457-4.

For purposes of this limit, all eligible 457(b) deferred compensation plans offered by a Participating Employer are treated as a single plan.

- 6.2. **Age 50 Catch-Up Annual Deferral Contributions.** A Participant who will attain age fifty (50) or more by the end of the calendar year is permitted to elect an additional amount of Annual Deferrals, up to the maximum age 50 catch-up Annual Deferrals for the year. The maximum dollar amount of the age 50 catch-up Annual Deferrals for a year is as set forth in Treasury Regulation 1.457-4.
- 6.3. **Special Section 457 Catch-Up Limitation.** If the applicable year is one of a Participant's last 3 calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 6.3 exceeds the amount computed under Sections 6.1 and 6.2, then the Annual Deferral limit under this Article VI shall be the lesser of:
- (a) An amount equal to 2 times the Section 6.1 Applicable Dollar Amount for such year; or
 - (b) The sum of:
 - (1) An amount equal to (A) the aggregate Section 6.1 limit for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus
 - (2) An amount equal to (A) the aggregate limit referred to in Code Section 457(b)(2) for each prior calendar year

beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee under the Plan (determined without regard to Sections 6.2 and 6.3), minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years. However, in no event can the deferred amount be more than the Participant's Compensation for the year.

6.4. **Coordination of Limits.**

- (a) **Participant Covered By More Than One Eligible Plan.** If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code Section 457(b), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article VI. For this purpose, the Program Administrator shall take into account any other such eligible plan maintained by the Employer for which the Program Administrator receives from the Employer sufficient information concerning such plan, and shall also take into account any other such eligible plan for which the Program Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. However, the Participating Employer is responsible for monitoring Annual Deferrals to the Plan and directing the distribution of any excess Annual Deferrals. See Sections 6.5 and 6.7.
- (b) **Pre-Participation Years.** In applying Section 6.3, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 6.1 or any other plan ceiling required by Code Section 457(b).
- (c) **Current Rule.** Any amounts contributed by the Participant to a tax-sheltered annuity pursuant to Section 403(b) or to a 401(k) plan pursuant to Code Section 402(e)(3) shall not reduce the maximum Annual Deferrals under Sections 6.1, 6.2, and 6.3.
- (d) **Coordination Responsibility.** The Participant is responsible for ensuring coordination of and compliance with the individual limit under Code Section 457(c), in the case of eligible plans of different employers.

- 6.5. **Participating Employer Responsibility for Contribution Limits.** The Participating Employer must monitor Annual Deferrals to the Plan on behalf of a Participant to this Plan and any other 457(b) plan maintained by the Participating Employer to determine compliance with the Annual

Deferral limitations under this Article. The Participating Employer must cease payroll deferrals to avoid exceeding the Annual Deferral limits and must notify the Program Administrator if excess deferrals have been made. Upon reasonable request by a Participating Employer, the Program Administrator will provide a Participating Employer any information reasonably necessary to comply with these Annual Deferral limits. Additionally, upon reasonable request by a Participating Employer, the Program Administrator shall provide information needed by the Employer for the Employer to complete tax returns for employees.

- 6.6. **Employer Contribution Limits.** If the Employer agrees to make contributions to the Plan on behalf of a Participant under Article V pursuant to the Adoption Forms, the Employer Contributions shall be deemed Annual Deferrals made by the Participant. For purposes of this Article, Employer Contributions shall be processed as payroll deferrals, shall apply toward the maximum Annual Deferral limits in the taxable year that they vest, and must comply with any procedure established by the Program Administrator.
- 6.7. **Correction of Excess Deferrals.**
- (a) **Excess Deferrals with Single Plan.** If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above (other than the individual limit of Code Section 457(c)), when this Plan is the only eligible plan offered by a Participating Employer, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.
- (b) **Excess Deferrals with Multiple Plans.** If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above (other than the individual limit of Code Section 457(c)) when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b), then the Participating Employer shall instruct the Program Administrator as to whether the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto) should be distributed from this Plan. If directed by the Employer, the excess deferrals shall be distributed from this Plan even if there would be no excess if only Annual Deferrals to this Plan were taken into account. Upon reasonable request by the Participating Employer, the Program Administrator will provide the Participating Employer any information reasonably necessary to comply with these responsibilities.

- (c) **Individual Limit.** If Annual Deferrals are in excess of the individual limit of Code Section 457(c), the Program Administrator may distribute excess deferrals at the direction of the Participant.
 - (d) **Roth Contributions.** If a Participant who made contributions to both the Pre-Tax Contribution Account and Roth Contribution Account for a calendar year has excess amounts for that year, the excess amounts will be distributed out of the Roth Contribution Account first, unless the Participant elects to instead have the excess amounts distributed first out of the Pre-Tax Contribution Account.
- 6.8. **Disregard Excess Deferral.** For purposes of Sections 6.1, 6.2, and 6.3, an individual is treated as not having Deferred Compensation under a plan for a prior taxable year to the extent excess deferrals under the plan are distributed, as described in Section 6.7.

ARTICLE VII - VESTING STANDARDS

- 7.1. **Employee Contributions.** A Participant shall be 100% Vested in the Participant's Annual Deferrals made pursuant to Article IV, and in the Participant's transferred amounts under Article XVIII, at all times. A Participant shall also be 100% Vested in the Participant's Rollover Account at all times.
- 7.2. **Employer Contributions.** A Participant shall Vest in the Matching and/or Non-Matching Contributions made pursuant to Article V pursuant to the schedule elected by the Participating Employer in the Adoption Forms. If a vesting schedule is selected by the Employer, it is the Employer's responsibility to calculate the Eligible Employee's service and report it to the Program Administrator. Service means the number of years and complete months of service of a Participant as an Eligible Employee of the Employer, and the Participant's service begins with the first day of employment as an Eligible Employee. A Participating Employer may elect from the following types of vesting schedules, and may elect different vesting schedules for Matching and Non-Matching Contributions.
- (a) Immediate Vesting.
 - (b) Cliff Vesting (100% vesting after a specified number of years of service).
 - (c) Graduated Vesting (a specified percentage vested for each completed Year of Service, not to exceed five (5) years).

For cliff or graduated vesting, the Participating Employer may elect in the Adoption Forms whether to give credit for service prior to adoption of the Plan and whether to add together different periods of employment.

- 7.3. **Forfeitures.** If a Participant has a Severance from Employment, the Participant's non-vested Employer Matching Contributions and/or non-vested Employer Non-Matching Contributions shall be forfeited as of the date of the Participant's Severance from Employment. The Employer is responsible for reporting forfeitures to the Program Administrator when they occur.

ARTICLE VIII - ACCOUNTS AND REPORTS

- 8.1. **Account.** The Program Administrator shall maintain applicable subaccounts within the Participant's Account with respect to each Participant. The Pre-Tax Contribution Account and/ or Roth Contribution Account, as applicable, shall be credited with the Participant's Annual Deferrals for each Payroll Period and with amounts that are transferred to the Participant's Account under Article XVIII. Employer Contributions shall be credited to the Employer Contribution subaccount. Voluntary Employee Contributions shall be credited to the Deemed Traditional IRA and/or Deemed Roth IRA, as elected by the Participant and pursuant to Article XXV. The balance of the Participant's Account shall be adjusted daily to reflect any distribution to the Participant and all interest, dividends, account charges and changes of market value resulting from the investment of the Participant's Account. All Plan records, including individual account information, that are maintained by the Program Administrator shall be the exclusive property of the Administrator. The Program Administrator may prescribe such minimum deposits to Participant's Account and each investment option for the Participant as it deems appropriate.
- 8.2. **Statements of Account.** A report of the status of each Participant's Account shall be furnished to the Participant by the Program Administrator within a reasonable time after the end of each Plan quarter. All reports to Participants shall be based on the fair market value of investments credited to their Accounts as of the reporting dates. Participant reports shall be deemed to have been accepted by the Participant as correct unless written notice to the contrary is received by the Program Administrator within ninety (90) days after the mailing or distribution of a report to the Participant.
- 8.3. **Year End Reports.** Within ninety (90) days after the end of each Plan Year, a written report shall be prepared and maintained on file by the Administrator showing the assets held under the Plan, a schedule of all receipts and disbursements and all material transactions of the Plan during the preceding year. This report shall be in a form and shall contain other information as the Program Administrator requires. The report shall also contain such information as is necessary to enable the Board to prepare its accounting due under the Trust.

ARTICLE IX - VALUATION OF ACCOUNTS

- 9.1. **Valuation.** The Program Administrator shall value the investments each business day based on acceptable industry practices. All daily transactions received shall be based on that day's closing market values.
- 9.2. **Deposits.** In all cases, deposits of contributions shall be treated as actually made only as of the date the funds are accepted as in good order by the Program Administrator.
- 9.3. **Report from Program Administrator to Board.** The Program Administrator shall provide a report to the Board concerning the valuation of Accounts established by agreement between the Board and the Program Administrator but not more than sixty (60) days after the end of the calendar quarter.

ARTICLE X - TRUST

- 10.1. **Trust Status.** All assets held in connection with the Plan, including all contributions and amounts of compensation deferred pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants and their Beneficiaries under the Plan. No part of the assets and income of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries and for defraying reasonable expenses of the Plan and/or Trust (in accordance with Code 457(g)). The Trust shall be exempt from tax pursuant to Code Sections 457(g)(2) and 501(a).
- 10.2. **Trust Fund.** To the extent required by Code Section 457(g), all amounts of compensation deferred pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights held as part of the Plan shall be held, managed, invested and distributed as part of the Trust in accordance with the provisions of the Plan and the Trust. All contributions to the Plan must be transferred by the Participating Employers to the Trust. All benefits under the Plan shall be distributed solely from the Trust pursuant to the Plan.
- 10.3. **Trustee.** The Trustee is the Trustee or any successor trustee or trustees designated and appointed by the Board under the Trust. In lieu of the Trustee, the assets of the Plan may be held in an annuity contract that satisfies the requirements of Code § 401(f).
- 10.4. **Group Trust.** To the extent permitted by law, the Board may commingle the investment of the Trust Fund with other funds that it administers. To the extent that the Board invests any money or assets of the Trust in a group trust as authorized by MCL 38.1140c, said group trust must:

- (a) expressly prohibit any part of the MERS' corpus or income from being used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the System,
- (b) be operated or maintained exclusively for the comingling and collective investment of funds from other trusts that is holds,
- (c) be intended to qualify as a group trust under Internal Revenue Code Sections 401(a) and 501(a), and
- (d) satisfy the requirements of Internal Revenue Code Section 401(a)(24) and the requirements for a group trust as established by Revenue Ruling 81-100, 1981-1 C.B. 326, as amended by Revenue Ruling 2004-67, 2004-2 C.B. 28, and as modified by Revenue Ruling 2011-1, 2011-2 I.R.B. 251.

ARTICLE XI - INVESTMENT OF ACCOUNTS

- 11.1. **Investment Options.** From time to time, the Board shall determine the available Investment Funds for Participants (or Beneficiaries upon the death of the Participant). The Participants may direct the investment of their Accounts among the Investment Funds selected by the Board. Unless otherwise directed by the Participant (or Beneficiary), in accordance with procedures established by the Program Administrator, a Participant's (or Beneficiary's) Employer Contribution subaccount and rollover subaccount shall be invested in the same manner as the Participant's (or Beneficiary's) Employee Contributions. The Program Administrator shall follow the Participant's (or Beneficiary's) directions with respect to the investment of each Participant's Account, except that the Program Administrator shall direct the investment of a Participant's (or Beneficiary's) Account to a default investment pursuant to Section 11.2 when there is no valid investment direction on file.
- 11.2. **Investment Default.** In the event that a Participant does not have a valid investment direction on file for any portion of the amount in that Participant's Account, the Account shall be invested in any default option or options as determined by the Board. In such event, the Participant shall be deemed to have directed that option (or options) for investment of their Account. The Board intends to establish one or more default options based upon various factors, including but not limited to, market risk, stability and rate of return. If the Board have appropriately exercised their fiduciary duty in selecting a default option(s), they have no liability for any loss sustained by a Participant or Beneficiary whose Account is invested in the default option(s).

ARTICLE XII - BENEFITS

- 12.1 **Benefit Payments.** Benefits shall be paid from the Trust in accordance with this Article following a Participant's Severance from Employment, attainment of age 70½ (if the Participant attains age 70½ on or before December 31, 2019), or age 72 (if the Participant attains age 70½ after December 31, 2019), Death, Disability, birth or adoption of a child by the Participant, or the occurrence of an unforeseeable emergency, as described in Section 12.5. Benefits payable to a Participant or a Beneficiary shall be based upon the value of the Participant's Account. Notwithstanding anything in this Article XII to the contrary, a Participant may elect to receive a distribution of his/her Deemed IRA(s) at any time, subject to the minimum distribution requirements in Article XXV and procedures established by the Program Administrator.
- (a) **Severance from Employment.** Upon Severance from Employment, a Participant is entitled to receive a distribution of his or her Account under any form of distribution permitted under Section 12.2, subject to Article XIV, commencing on a date selected by the Participant which may not be later than the required distribution date of Code Section 401(a)(9), as specified in Article XIV. A Participant may elect to change the commencement date of distribution of the Account to a later date otherwise permitted under this Article, so long as the commencement date meets the required distribution commencement date provisions of Code Section 401(a)(9). All benefits shall be paid under a payment option under Section 12.2, subject to Article XIV.
- (b) **Attainment of age 70½/72.** Upon attaining age 70½ (if the Participant attains age 70½ on or before December 31, 2019), or age 72 (if the Participant attains age 70½ after December 31, 2019), a Participant may elect to have benefits commence on a date that is no later than the required distribution date of Code Section 401(a)(9), as specified in Article XIV. All benefits shall be paid under a payment option under Section 12.2, subject to Article XIV.
- (c) **Death.** In the event of the Participant's death prior to the commencement of benefits under paragraph (a), the value of the Participant's Account shall be paid to the Beneficiary under Section 12.3, subject to the restrictions in Article XIV. Such benefits shall be payable commencing within sixty (60) days after receipt by the Program Administrator of satisfactory proof of the Participant's death. However, if the Beneficiary is the spouse of the Participant, then the spouse may elect, within sixty (60) days of Participant's death, to defer distribution to a date not later than the date when the Participant would have attained age 70½ (if the Participant would

have attained age 70½ on or before December 31, 2019), or age 72 (if the Participant would have attained age 70½ after December 31, 2019). In the event of the Participant's death after commencement of benefits, benefits shall be paid subject to Article XIV.

- (d) **Disability.** Upon Severance from Employment with the Participating Employer because of Disability, a Participant may elect to have benefits commence on a date which is no later than the required beginning date under Code Section 401(a)(9), as specified in Article XIV. A Participant who is on leave without pay who becomes Disabled within the first six (6) months of the leave shall be considered to have separated from service on account of Disability. A Participant may change the commencement date of distribution of the Account to a later date otherwise permitted under this Article, so long as the commencement date meets the required distribution commencement date provisions of Code Section 401(a)(9). All benefits shall be paid under a payment option under Section 12.2, subject to the restrictions in Article XIV.
- (e) **Birth or Adoption.** Upon eligibility for a Qualified Birth or Adoption Distribution, a Participant may elect to have benefits commence on a date which is no later than the requirement beginning date under Code Section 401(a)(9) as specified in Article XIV, subject to the following limitations and definitions:
- (1) A "Qualified Birth or Adoption Distribution" is a distribution, not to exceed \$5,000, from a Participant's vested Account that is paid during the 1-year period beginning on the date on which a child of the Participant is born or on which the legal adoption by the Participant of an Eligible Adoptee is finalized.
 - (2) An "Eligible Adoptee" is any individual (other than a child of the Participant's spouse) who has not attained age 18 or is physically or mentally incapable of self-support.
 - (3) The \$5,000 limitation shall not be met unless the aggregate amount of such distributions from all plans maintained by the Employer to such Participant does not exceed \$5,000.
 - (4) The Participant may repay a Qualified Birth or Adoption Distribution by making one or more contributions in an aggregate amount not to exceed the amount of the Qualified Birth or Adoption Distribution to any eligible plan or IRA to which such Participant could make a Rollover Contribution. If made to the System, the System shall treat such contribution as an Eligible Rollover Distribution.

- (f) **Coronavirus-Related Distribution.** A Participant who is a Qualified Individual as defined below may apply for and receive a Coronavirus-Related Distribution, on or after January 1, 2020, and before December 31, 2020, only, in an amount not to exceed the lesser of the present value of the vested portion of the Participant's Account on the date of distribution, or \$100,000. The Program Administrator may rely on the Participant's certification that the Participant satisfies the requirements of this subsection (f) in determining whether any distribution is a Coronavirus-Related Distribution. A Coronavirus-Related Distribution shall not be treated as an Eligible Rollover Distribution.
- (1) A "Qualified Individual" is a Participant who:
- (A) is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention, or
 - (B) has a spouse or dependent (as defined in section 152 of the Internal Revenue Code of 1986) diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention, or
 - (C) experiences adverse financial consequences as a result of
 - (i) being quarantined, furloughed or laid off or having work hours reduced due to COVID-19,
 - (ii) being unable to work due to lack of child care due to COVID-19,
 - (iii) being unable to work due to closing or reducing hours of a business owned or operated by the Participant due to COVID-19, or
 - (iv) other factors as determined by the Secretary of the Treasury.
- (2) A Participant who receives a Coronavirus-Related Distribution may repay such distribution in one or more contributions to the Plan or to a deemed IRA established with this Plan within three years of the Distribution. Such repayment shall be treated for tax purposes as a Direct Rollover.

- 12.2. **Payment Options.** The election of a payment option by a Participant or a Beneficiary under Section 12.1 must be made no later than thirty (30) days before the commencement of such benefits. Subject to restrictions established by the Program Administrator, the Plan shall permit payout options in the form of lump sums, periodic payments of a fixed amount or fixed duration, or life contingent annuities. Absent such an election, the Account will be paid in a lump sum. If at the time the payment of a participant or beneficiary's vested accumulated account balance (including that portion of the balance attributable to rollover contributions and earnings) is \$1,000 or less, the vested balance shall be paid to the participant or beneficiary in a lump sum as soon as administratively possible on or after the date the benefit is otherwise payable, unless the participant or beneficiary elects to have the account balance rolled over to an eligible retirement plan or remain in the plan subject to restrictions established by the Program Administrator. See Article XV for rollover distribution options.
- 12.3. **Designated Beneficiary.** A Participant shall have the right to file with the Program Administrator an Applicable Form designating the Beneficiary or Beneficiaries who shall receive the benefits payable under the Plan in the event of the Participant's death. Should no beneficiary be designated by the Participant, MERS will rely on the order below for paying benefits in the event of death. No Beneficiary designation shall take effect until an Applicable Form is signed by the Participant and received and accepted by the Program Administrator.

A Participant shall have the right to designate at least one primary and contingent Beneficiary and to indicate whether the Beneficiaries in each class are to share equally or according to specific percentages. If a Beneficiary predeceases the Participant, the surviving Beneficiaries in the same class (i.e., primary or contingent) will share among each other all benefits in the same proportion as originally designated by the Participant. A contingent Beneficiary shall receive benefit payments only if there is no surviving primary Beneficiary. In the event of the death of a Beneficiary, after the Beneficiary has become entitled to receive benefits, the remaining benefits shall be paid to the estate of the Beneficiary in a lump sum. The Beneficiary designation may be changed by the Participant in writing on the Applicable Form at any time prior to Retirement. Only the last designation of a Beneficiary prior to Retirement shall have effect, and any new designation of a Beneficiary invalidates, supersedes, and revokes any prior designation. A Participant may make a separate Beneficiary designation with respect to the portion of his or her Account held in Deemed IRAs.

In the event there is no valid Designated Beneficiary in effect at the time of the Participant's death, the benefit paid to the Beneficiary, if any, shall be paid to individual(s) identified below.

- (a) Surviving spouse to whom the participant was married at the time of death, or if none;
- (b) Participant's surviving child(ren) in equal shares, or if none;
- (c) Surviving individual(s) most recently named by the participant as beneficiary(ies) for another MERS plan, in equal shares. If there are multiple beneficiaries named on the same day, pension-related products (DB, DC, H) will take precedence. If none,
- (d) Participant's surviving parent(s) in equal shares, or if none;
- (e) Individual(s) named as beneficiary of the participant's estate, in equal shares, or if none;
- (f) Individual(s) identified as entitled to a share of the participant's property in a sworn Affidavit of Decedent's Successor for Delivery of Certain Assets Owned by Decedent with respect to the participant, in accordance with MCL §§ 700.3983-700.3984, in proportion to the shares identified on that form.

Notwithstanding anything in this Plan Document to the contrary, distributions to Participants and Beneficiaries shall not commence later nor in an amount that is less than required by IRC Section 401(a)(9).

With respect to a spouse for whom a Participant has established a spousal IRA, the beneficiary provisions of this subsection (with the exception of subsections (b) and (c)) shall apply to the spouse with respect to the spousal IRA as if the spouse were the Participant.

12.4. **Voluntary In-Service Distribution.** A Participant who is an active employee of a Participating Employer may elect to receive a distribution of the Participant's entire Account under the Plan before a Severance from Employment if the following requirements are met:

- (a) The Participant's entire Account balance does not exceed the amount specified in Code Section 411(a)(11) or such other amount as determined by the Administrator on the date of the distribution,
- (b) The Participant has not previously received an in-service distribution of the Participant's Account, and
- (c) No amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution.

This election must be made in accordance with the procedures established by the Program Administrator.

- 12.5. **Unforeseeable Emergency Distributions.** Notwithstanding any other provision herein and subject to guidelines and requirements set forth in procedures established by the Administrator, if a Participant or Primary Beneficiary has an unforeseeable emergency before Severance from Employment, the Participant may elect to receive a lump sum distribution from the Participant's Pre-Tax Contribution Account equal to the amount requested or, if less, the maximum amount determined under the Program Administrator's procedures to be permitted to be distributed under this Section. Only Qualified Distributions from the Roth Contribution Account are available for unforeseeable emergency distributions.
- (a) **Procedures.** The Program Administrator shall establish procedures to review and approve or deny all requests for an unforeseeable emergency distribution. If the application for payment is approved by the Program Administrator, payment shall be effected as soon as practicable thereafter.
- (b) **Unforeseeable Emergency Defined.** An unforeseeable emergency is defined as a severe financial hardship of the Participant or the Participant's primary Beneficiary resulting from: an illness or accident of the Participant or the Participant's primary Beneficiary, the Participant's or the Participant's primary Beneficiary's spouse or dependent (as defined in Code Section 152 without regard to the Code Sections 152(b) (1), (b)(2), and (d)(1)(B)); loss of the Participant's or the Participant's primary Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's or Participant's primary Beneficiary's spouse or dependent (as defined in Code Section 152 without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B)); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Participant's primary Beneficiary. For example, the imminent foreclosure of or eviction from the Participant's or Participant's primary Beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses for the Participant or the Participant's primary Beneficiary, or of the Participant or the Participant's primary Beneficiary's spouse or dependent (as defined in Code Section 152 without regard to Code Sections 152(b) (1), (b)(2), and (d)(1)(B)), including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically

provided in this Section 12.5, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency. For purposes of this Section, “primary Beneficiary” means an individual who is named as a Beneficiary under the Plan and has an unconditional right to all or a portion of the Participant’s Account Balance upon the death of the Participant.

- (c) **Unforeseeable Emergency Distribution Standard.** A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant’s assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan.
- (d) **Distribution Necessary to Satisfy Emergency Need.** Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).
- (e) **Claim Procedures Applicable.** The claim procedures of Article XX apply to the decision of the Program Administrator concerning financial hardship.

- 12.6. **Plan Loans Allowable.** Unless the Participating Employer has affirmatively elected in the Adoption Forms to make loans available to Participants, Plan loans to Participants shall not be permitted. Where loans are elected by the Participating Employer, a Participant may apply for a loan from this Plan pursuant to uniform guidelines that have been approved by the Program Administrator and subject to Code Section 72(p).

The Participating Employer shall establish a written policy governing the granting of loans that is not inconsistent with the provisions of this Plan, and which makes loans available to all Participants on a reasonably equivalent basis. Loans from Roth Contribution Accounts and Deemed IRAs are not permitted.

With respect to any Plan loan made during the 180-day period beginning on March 27, 2020 and ending on September 22, 2020, only, to a Participant who is a Qualified Individual as defined in Section 12.1(f)(1), a Participating Employer may provide that the maximum amount that can be borrowed shall be the lesser of:

- (a) 100% of the present value of the vested portion of the Participant's Account on the date of distribution, or
- (b) \$100,000, reduced by the excess of the Participant's highest outstanding loan balance(s), if any, during the prior 12 months over the balance(s) immediately prior to the date the loan is made.

The due date for any loan repayment due between March 27, 2020 and December 31, 2020 for a loan that was outstanding on March 27, 2020 is delayed by one year. Subsequent payments shall be adjusted as necessary to account for the delay, including interest, and any delay in repayment shall be disregarded for purposes of determining compliance with the five-year term limit.

ARTICLE XIII - DOMESTIC RELATIONS ORDERS

- 13.1. **General Provisions.** Domestic relations orders which satisfy the requirements of Code Sections 414(p)(1)(A)(i) and 414(p)(1)(B), this Article, and the procedures established by the Program Administrator for such orders shall be considered Plan-Approved Domestic Relations Orders ("PADROs") and shall be honored by the Plan. The Program Administrator is authorized to establish and amend procedures for the determination of PADROs consistent with the above-referenced Code provisions and this Article.
- 13.2. **Investments.** During the period that the issue of whether an order satisfies the applicable requirements of the Code and the procedures established by the Program Administrator is under consideration, the investment direction of the Participant with respect to the Participant's Accounts shall remain in effect, subject to a determination by the Program Administrator that such investment direction would be contrary to a final court order. After a determination has been made that a domestic relations order satisfies the applicable requirements of the Code and the procedures established by the Program Administrator and a separate Plan Account has been established for the alternate payee, the alternate payee shall direct the investment of his or her Plan Account. The Program Administrator shall direct the investment of an alternate payee's Account to a default investment pursuant to Section 11.2 when there is no valid investment direction on file. The alternative payee's Account shall be assessed administrative fees in the same amount and in the same manner as a Participant's Account.
- 13.3. **Distributions to Alternate Payees.** Distribution of benefits to the alternate payee shall commence as soon as administratively practicable after (i) a determination is made that the order satisfies the applicable requirements of the Code and the procedures established by the Program Administrator, and (ii) receipt by the Program Administrator of the

Applicable Forms for the election of benefits. In the event of an alternative payee's death, any remaining benefits shall be payable solely to the alternate payee's estate, via the duly-appointed and then- currently serving executor of the alternative payee's estate.

- 13.4. **Transfer of Deemed IRAs Pursuant to Divorce.** In addition to the foregoing, the Program Administrator may approve a direct transfer of all, or a portion of, a Participant's interest in his or her Deemed IRA to a separate individual retirement account or individual retirement annuity owned by such Participant's spouse or former spouse, pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree. A domestic relations order described in Section 13.1 may serve as the written instrument to provide for such transfer if it otherwise meets the requirements of this Section. The Program Administrator shall establish reasonable procedures for determining the status of any such decree or written instrument and for effectuating transfer in accordance with Code Section 408(d)(6). Notwithstanding any other provision of the Plan, any benefit payable to a Participant or the Beneficiary of a Participant shall be reduced by any benefits transferred or pending transfer from the benefits of the Participant under the Plan pursuant to this Section.

ARTICLE XIV - MINIMUM DISTRIBUTION RULES

- 14.1. **Precedence.** The requirements of this Article will take precedence over any inconsistent provisions of the Plan, except that the minimum distribution rules related to Deemed IRAs are set forth in Article XXV.
- 14.2. **Requirements of Treasury Regulations Incorporated.** All distributions required under this Article will be determined and made in accordance with the Treasury Regulations under Code Section 401(a)(9).
- 14.3. **Time and Manner of Distribution.**
- (a) The Participant's entire interest will be distributed, or begin to be distributed, to the Participant not later than the Participant's Required Beginning Date.
 - (b) If the Participant dies before distribution begins, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (1) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then 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 the

Participant would have attained age 70½ on or before December 31, 2019), or age 72 (if the Participant would have attained age 70½ after December 31, 2019), if later.

- (2) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary may be made by lump sum, and distribution must be made no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (4) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection (b), other than subsection (b)(2), will apply as if the surviving spouse were the Participant.

For purposes of this subsection (b) and Section 14.5, unless subsection (b)(4) of this Section applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection (b)(4) of this Section applies, distributions are considered to begin on the date the distributions are required to begin to the surviving spouse under subsection (b)(1) of this Section. 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 subsection (b)(1) of this Section), the date distributions are considered to begin is the date distributions actually commence.

- (c) Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 14.4 or 14.5. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the

requirements of Code Section 401(a)(9) and the Treasury Regulations.

14.4. **Required Minimum Distributions During Participant's Lifetime.**

- (a) During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:
 - (1) The quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation §1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
 - (2) 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 Treasury Regulation §1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.
- (b) Required minimum distributions will be determined under this Section beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

14.5. **Required Minimum Distributions After Participant's Death.**

- (a) **Death on or After Date Distributions Begin (for a Participant who dies before January 1, 2022).**
 - (1) If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:
 - (A) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (B) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life

Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

- (C) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
 - (2) 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 (for a Participant who dies before January 1, 2022).**
- (1) 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 subsection (a) of this Section.
 - (2) If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (3) If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 14.3(b)(1), this subsection (b) will apply as if the surviving spouse were the Participant.

(c) **Death of a Participant who dies on or after January 1, 2022.**

The Participant's entire Account Balance will be distributed, or begin to be distributed, no later than as follows:

- (1) If to a beneficiary who is not a Designated Beneficiary, the Participant's entire Account Balance must be distributed by the end of the fifth Calendar Year following the year of the Participant's death.
- (2) If to a Designated Beneficiary, the Participant's entire Account Balance must be distributed by the end of the tenth Calendar Year following the year of the Participant's death.
- (3) If to an Eligible Designated Beneficiary, the Participant's entire Account Balance may be paid over life or Life Expectancy of such Eligible Designated Beneficiary beginning in the year following the year of the Participant's death, except that, if the Eligible Designated Beneficiary is the surviving spouse of the Participant:
 - (A) the date on which the distributions are required to begin hereunder shall not be earlier than the date on which the Participant would have attained age 70½ (if the Participant would have attained age 70½ on or before December 31, 2019), or age 72 (if the Participant would have attained age 70½ after December 31, 2019), and
 - (B) Any Account Balance remaining after such spouse's death will be distributed over such spouse's remaining Life Expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death or, if the distributions are being made over the spouse's Life Expectancy, over such period.
- (4) An Eligible Designated Beneficiary who is a child of the Participant who has not reached the age of majority shall cease to be an Eligible Designated Beneficiary as of the date

the individual reaches majority, and any remaining Account Balance shall be distributed within 10 years after such date.

- (5) After the death of an Eligible Designated Beneficiary, any remaining Account Balance must be distributed by the end of the tenth calendar year following the year of the death of the Eligible Designated Beneficiary.
- (6) The term “Designated Beneficiary” means any individual designated as a beneficiary by the Participant. The term “Eligible Designated Beneficiary” means, with respect to any Participant, any Designated Beneficiary who is:
 - (A) the surviving spouse of the Participant,
 - (B) subject to subsection (C) below, a child of the Participant who has not reached majority (within the meaning of IRC 401(a)(9)(F)),
 - (C) disabled (within the meaning of IRC 72(m)(7)),
 - (D) a chronically ill individual (within the meaning of IRC 7702B(c)(2), except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature), or
 - (E) an individual not described in any of the preceding subclauses who is not more than 10 years younger than the Participant.

The determination of whether a Designated Beneficiary is an Eligible Designated Beneficiary shall be made as of the date of death of the Participant.

14.6. **Definitions for this Article.**

- (a) “**Designated Beneficiary**” means the individual who is designated as the beneficiary under Article XI and is the Designated Beneficiary under Code Section 401(a)(9) and Treasury Regulation §1.401(a)(9)-1, Q&A-4.
- (b) “**Distribution Calendar Year**” means a calendar year for which a minimum distribution is required pursuant to Code Section

401(a)(9). For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 14.3(b). The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

- (c) **"Life Expectancy"** means life expectancy as computed by use of the Single Life Table in Treasury Regulation §1.401(a)(9)-9.
- (d) **"Participant's Account Balance"** means the Account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) (i) increased by the amount of any contributions or forfeitures allocated to the Participant's Account Balance in the valuation calendar year and (ii) decreased by distributions made in the valuation calendar year. The Participant's 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"** means April 1 of the calendar year following the later of (i) the calendar year in which the Participant reaches age 70½ (if the Participant attains age 70½ on or before December 31, 2019), or age 72 (if the Participant attains age 70½ after December 31, 2019), or (ii) the calendar year in which the Participant retires from a Participating Employer.

14.7. **No Expansion of Payment Options.** Nothing in this Article shall provide any individual entitled to a benefit under this Plan a benefit or payment option to which such individual would not otherwise be entitled pursuant to the provisions of the Plan.

14.8. **2020 Waiver.** Notwithstanding anything herein to the contrary, the minimum distribution requirements are waived for calendar year 2020, pursuant to § 2203 of the Coronavirus Aid, Relief and Economic Security Act of 2020. This waiver applies to 2019 required minimum distribution that were required to be made by April 1, 2020 (if not already made in

2019), and to 2020 required minimum distributions that are required to be made by April 1, 2021. A participant or beneficiary who would have been required to receive a 2020 RMD will not receive this distribution unless the participant or beneficiary elects to receive the distribution. For purposes of determining the amount of required minimum distributions made after 2020, an individual's required beginning date shall be determined without regard to this 2020 waiver. If all or any portion of a distribution during 2020 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under Code § 401(a)(9) had applied during 2020, such distribution shall not be treated as an eligible rollover distribution any purpose.

ARTICLE XV - ELIGIBLE ROLLOVER FROM THIS PLAN

- 15.1. **Plan Distributions and Withholding Requirements.** To the extent required by applicable provisions of the Code and regulations issued thereunder, a Distributee may elect, at the time and in the manner prescribed by the Program Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- 15.2. **Definitions.** The following definitions shall apply to this Article:
- (a) **“Eligible Rollover Distribution”** is any distribution under Article XII of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) the portion of any distribution that is not includable in gross income; or (iv) any distribution which is made upon the hardship of the Distributee.
 - (b) **“Eligible Retirement Plan”** is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), a qualified trust described in Code Section 401(a) that accepts the Distributee's eligible rollover distribution or an annuity contract described in Code Section 403(b), an eligible plan under 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 and which agrees to separately account for amounts transferred into such plan from this Plan, and a Roth IRA described in Code Section 408A. The

definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p). The definition of an Eligible Retirement Plan for a nonspouse designated beneficiary of a deceased participant means an individual retirement annuity account established for the purpose of receiving a distribution from this Plan and treated as an inherited individual retirement account or annuity (within the meaning of Code Section 408(d)(3)(C)).

- (c) “**Distributee**” includes an employee, former employee, and, effective January 1, 2010, a nonspouse designated beneficiary (as defined in Code Section 401(a)(9)(E)) of a deceased Participant. In addition, the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.
- (d) “**Direct Rollover**” is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

15.3. **Notice Requirements.** Not fewer than 30 nor more than 180 days before a Plan distribution, the Program Administrator shall provide the recipient with a written tax explanation as required by Code Section 402(f), if applicable, including an explanation of (i) the direct transfer of benefits, if applicable; (ii) the applicability of withholding taxes; (iii) the availability of direct transfers or rollovers; (iv) the availability of the special forward income averaging of Code Section 402(d); and (v) the applicability of such provisions to an alternate payee under Code Section 402(e). Notwithstanding the preceding sentence, a distribution may begin fewer than 30 days after the notice described in the preceding sentence is given, provided that:

- (a) the Program Administrator clearly informs the Participant that the Participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a participant distribution option), and
- (b) the Participant, after receiving a notice, affirmatively elects a distribution.

ARTICLE XVI - ROLLOVERS AND CONVERSIONS TO AND WITHIN THIS PLAN

16.1. **Rollover Contributions.** To the extent permitted by the applicable provisions of the Code and regulations issued thereunder, the Plan shall accept a Participant’s rollover of a qualified rollover distribution from a

governmental deferred compensation plan under Code Section 457(b), provided that the Program Administrator, in its discretion, determines that the contribution satisfies all applicable requirements of the Code. A rollover contribution shall be allocated to the Rollover Account in the Participant's Account as of the date of the contribution. Unless otherwise directed by the Participant, in accordance with procedures established by the Program Administrator, the Participant's Rollover Account shall be invested in the same manner as the Participant's Employee Contributions. In the event that the Program Administrator establishes a procedure under which all amounts received from a qualified plan, individual retirement account or annuity, or a tax-sheltered 403(b) plan would be separately accounted for, the Plan shall accept a Participant's rollover of a qualified rollover distribution from a qualified plan under Code Section 401(a), an annuity plan under Code Section 403(a), an individual retirement account or annuity, or a tax-sheltered annuity under Code Section 403(b), provided that the Program Administrator, in its discretion, determines that the contribution satisfied all applicable requirements of the Code. The Participant's Rollover Account shall be available for distribution, under the payment options set forth in Section 12.2, at any time at the direction of the Participant, subject to any limitations, applicable penalties or other distribution requirements under the Code (including, but not limited to, the minimum distribution rules contained in Article XIV).

- 16.2. The Plan shall also accept as a Rollover Contribution a payment in the form of cash that is an Eligible Rollover Distribution (as defined in Section 15.2(a)) from another Eligible Retirement Plan (as defined in Section 15.2(b)) to a Participant's Deemed IRAs, pursuant to Article XXV, but only to the extent the rollover is permitted under the rules of Code Section 402(c), provided that the Program Administrator, in its discretion, determines that the contribution satisfies all applicable requirements of the Code.
- 16.3. **Roth Rollover Contributions.** In the event that the Program Administrator establishes a procedure under which all amounts received from a designated Roth account would be separately accounted for, the Plan shall permit a Participant to make a direct trustee-to-trustee transfer from a designated Roth Account under a 457(b), 401(k), or 403(b) plan to a designated Roth account established for the Participant but only to the extent the rollover is permitted under the rules of Code Sections 402(c) and 402A(c).
- 16.4. **In-Plan Roth Conversions.** If elected in the Adoption Forms, a Participant may convert any vested pre-tax deferrals held on behalf of the Participant (other than designated Roth contributions) for an in-plan Roth rollover to a designated Roth account established for the Participant, even if the vested amount is not otherwise distributable (pursuant to

Code Section 402A(c)(4)(E)), and the conversion shall be treated as a qualified rollover contribution (within the meaning of Code Section 408A(e)). A Participant's election under this Section 16.3 shall be subject to reasonable administrative procedures established by the Program Administrator, Code Section 402A(c)(4), applicable treasury regulations, and any subsequent guidance from the Internal Revenue Service. Amounts converted to a designated Roth account shall be subject to the distribution restrictions under Code Section 408A(d). The Program Administrator may impose reasonable restrictions on amounts and frequency of in-Plan Roth conversions that shall be uniformly applied. Any of the Participant's pre-tax deferrals that are converted to a designated Roth account under this Section 16.3 shall be included in the Participant's gross income in the tax year in which the conversion occurs in accordance with Code Section 408A(d)(3).

ARTICLE XVII - PARTICIPATING EMPLOYER OBLIGATIONS

- 17.1. **Participating Employer Obligations.** Each Participating Employer is required to: (i) remit contributions on a timely basis pursuant to Articles IV, V and VI; (ii) notify the Administrator of any change in the Adoption Forms at least thirty (30) days prior to the proposed effective date of the change; (iii) promptly provide and/or distribute any reports, information, or notices as required by the Program Administrator; and (iv) comply with all requirements of the Plan. The Participating Employer will also be responsible for ensuring that all of its arrangements, treated as a single plan, comply with the applicable requirements of Code Section 457 and Treasury Regulations, including, but not limited to, the coordination of limitations on Annual Deferrals (including the basic limit, age 50 catch-up limit, and special 457 catch-up limit under Article VI), corrections of excess deferrals (Section 6.7), and plan-to-plan transfers (Article XVIII). The Plan for a Participating Employer who fails to comply with its obligations under the Plan may be terminated by the Board in their discretion. A Participating Employer shall not be liable for losses arising from expense charges of any kind or from depreciation or shrinkage in the value of investments made under this Plan.

ARTICLE XVIII - PLAN TO PLAN TRANSFERS

- 18.1. **Direct Transfers Among Plans of the Same Employer.** A transfer from this Plan to another eligible governmental plan of the same Employer and a transfer to this Plan from another eligible governmental plan of the same Employer is permitted under the following conditions:
- (a) The transfer is from an eligible governmental plan to another eligible governmental plan of the same employer (and, for this purpose, the employer is not treated as the same employer if the participant's compensation is paid by a different entity);

- (b) The transferor plan provides for transfers;
- (c) The receiving plan provides for the receipt of transfers;
- (d) The participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and
- (e) The participant or beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the participant or beneficiary is performing services for the entity maintaining the receiving plan.

18.2. **Plan-to-Plan Transfers from the Plan to the Plan of Another Employer.**

- (a) At the direction of the Participating Employer, the Program Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of Code Section 457(b) and Treasury Regulation §1.457-2(f). A transfer is permitted under this Section 18.2(a) for a Participant only if the Participant has had a Severance from Employment with the Participating Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Section 18.2 (a) only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers only with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.
- (b) Upon the transfer of assets under this Section 18.2, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Program Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 18.2 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 18.2, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treasury Regulation §1.457-10(b).

18.3. **Plan-to-Plan Transfers to the Plan.** At the direction of the Participating Employer, the Program Administrator may permit a class of Participants who are participants in another eligible governmental plan under Code

Section 457(b) to transfer assets to the Plan as provided in this Section. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Program Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Program Administrator. The Program Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code Section 457(e)(10) and Treasury Regulation §1.457-10(b) and to confirm that the other plan is an eligible governmental plan as defined in Treasury Regulation §1.457-2(f). The amount so transferred shall be credited to the Participant's Account and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Article VI.

18.4. **Permissive Service Credit Transfers.**

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's vested Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 18.4(a) may be made before the Participant has had a Severance from Employment.
- (b) A transfer may be made under Section 18.4(a) only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3). The transfer amount shall not exceed the amount required by the crediting plan in order for service credit to be granted.
- (c) No portion of the Participant's Account attributable to Roth Contributions or Roth Rollovers may be transferred under this Plan Section 18.4.

18.5. **Direct Transfers to this Plan.** Subject to the approval of the Program Administrator, this Plan shall accept non-Roth cash transfers of Participants' accounts maintained under an eligible Section 457(b) plan directly to this Plan. Subject to the approval of the Program Administrator, direct transfers of designated 457(b) Roth accounts are permitted only if the Employer elects to permit Roth Contributions under the Plan.

ARTICLE XIX - ADMINISTRATION OF PLAN

- 19.1. **Compliance with Code Section 457.** At all times, the Plan shall be administered in accordance and construed to be consistent with Code Section 457 and its accompanying regulations.
- 19.2. **Duties and Powers of the Board.** The Board shall have the authority to control and manage the operation and administration of the Plan and shall be a named fiduciary of the Plan.
- (a) The Board shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to enable the Board to carry out their duties under the Plan. The Board also has the powers and duties specified in the Trust Agreement. By way of illustration and not limitation, the Board are empowered and authorized:
- (1) to establish procedures with respect to administration of the Plan, not inconsistent with the Plan and the Code, and to amend or rescind such procedures;
 - (2) to determine, consistent with the Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to the eligibility for participation in the Plan and eligibility for distribution of benefits from the Plan, and the status of any person claiming benefits under the Plan, including without limitation, Participants, former Participants, Beneficiaries, Employees and former Employees;
 - (3) pursuant to Article XII of the Plan, to make payments from the Trust to Participants, their Beneficiaries and other persons as the Board may determine;
 - (4) to contract with one or more Program Administrators to perform education, enrollment, and administrative services under this Plan;
 - (5) to accept service of legal process;
 - (6) subject to and consistent with the Code, to construe and interpret the Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Plan with respect to same.
- (b) Any action by the Board, which is not found to be an abuse of discretion, shall be final, conclusive and binding on all individuals affected thereby. The Board may take any such action in such manner and to such extent as the Board in their sole discretion may

deem expedient and the Board shall be the sole and final judge of such expediency.

- (c) The Board may delegate any power or duty to the Program Administrator except where the Board is required to review an action by the Program Administrator.

19.3. **Advice.** The Board may employ one (1) or more persons to render advice with regard to their responsibilities under the Plan.

19.4. **Delegation by Board.** In addition to the powers stated in Section 19.2, the Board may from time to time delegate to an individual, committee or organization certain of their fiduciary or other responsibilities under the Plan. Any such individual, committee or organization shall remain a fiduciary until the delegation of fiduciary duty is revoked by the Board, which revocation may be without cause and without advance notice. Such individual, committee or organization shall have such power and authority with respect to delegated fiduciary or other responsibilities as the Board have under the Plan.

19.5. **Fiduciary Insurance.** MERS may purchase fiduciary liability insurance and/or errors and omissions insurance to cover any fiduciary of the Program or Trust, including the Board, and MERS shall pay the premiums therefore from the Trust.

19.6. **Payment of Benefits.**

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

- (b) **Correctness of Actions.** The Board or Program Administrator, if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment, or may file, in any state court of competent jurisdiction, a suit, in such form as it considers appropriate, for legal determination of the benefits to be paid and the persons to receive them. The Board or Program Administrator may also bring a suit or take such other action as it deems appropriate in the case of questions involving

investment directions. The Board and Program Administrator shall comply with the final order of the court in any such suit, and Participants, Beneficiaries, and Participating Employers shall be bound thereby insofar as such order affects the benefits payable under this Plan or the method or manner of payment.

- 19.7. **Limitation on Recovery.** Participating Employers, Participants, and Beneficiaries may not seek recovery against the Board, MERS or any employee or agent of the Board, for any loss sustained by any Participating Employer, Participant, or Beneficiary due to the nonperformance of their duties, negligence or any other misconduct of the above-named persons. Participants and Beneficiaries may not seek recovery against Participating Employers or any employee or agent of the Participating Employer, for any loss sustained by the Participant or Beneficiary due to the nonperformance of their duties, negligence or any other misconduct of the above-named persons. This paragraph shall not, however, excuse fraud or a wrongful taking by any person.
- 19.8. **Indemnification.** The Board shall indemnify to the extent authorized or permitted by law (and consistent with the Plan's tax status) any person, and such person's heirs and legal representatives, who is made or threatened to be made a party to any action, suit or proceeding (whether civil, criminal, administrative or investigative) whether brought by or in the right of the Retirement Board or System or otherwise, by reason of the fact that such person is or was a trustee, director, officer, employee or agent of the Retirement Board or System or such person served on any formally constituted advisory body or committee of the Retirement Board. There is no duty to indemnify where such person is judicially determined to have incurred liability due to fraud, gross neglect, or malfeasance in the exercise and performance of his/her duties.

ARTICLE XX - CLAIMS PROCEDURE

- 20.1. **Claims Procedure: Program Administrator.** Any Participant may present a claim in writing to the Program Administrator for any issue involving the Participant's Account investments or record-keeping. In addition, the Board may refer such issues as it may deem advisable to the Program Administrator for review and proposed resolution. Where a protocol is established by the Board, the Program Administrator shall utilize the protocol. The Program Administrator, subject to Section 20.3, shall resolve any such claim presented to it. If a Participant is not satisfied with the proposed resolution determined by the Program Administrator, the Participant may request in writing an appeal under Section 20.4.
- 20.2. **Claims Procedure: Employer.** Any Participant may present a claim in writing to the Participant's Employer for any issue involving eligibility. In addition, the Program Administrator may refer such issues to the

Employer for review and resolution. The Employer, subject to Section 20.3, shall resolve any such claim presented to it. If a Participant is not satisfied with the resolution determined by the Employer, the Participant may request in writing an appeal under Section 20.4.

- 20.3. **Claims Procedure: Generally.** The Program Administrator shall have sole discretion to determine, based upon the issue(s) raised, if a claim should be resolved by the Program Administrator or the Employer pursuant to Sections 20.1, 20.2, or 20.3, respectively. A Participant, Beneficiary, or other person claiming benefits under this Plan (“Claimant”) may present a claim in writing to the Program Administrator for any issue not covered by Section 20.1 or 20.2. The Program Administrator shall resolve any such claim presented to it. If the Claimant is not satisfied with the resolution determined by the Program Administrator, the Claimant may appeal the Program Administrator’s decision under Section 20.4. Notwithstanding anything contained herein to the contrary, in any issue involving information on statements of account, including but not limited to account balances, directed investment options, and transfers and contributions, the Participant must give the Program Administrator written notice of any questions or disputes within sixty (60) days after the mailing or distribution of the statement to the Participant.
- 20.4. **Appeals Procedure**
- (a) Within sixty (60) days of the date of mailing of the Program Administrator’s notice of decision under Section 20.3 or 20.4, the Claimant may appeal the decision and request a hearing to be conducted by a Hearing Officer designated by the Board. If such request is not filed within the sixty (60) days, the decision of the Program Administrator shall be final and binding. The sixty (60) day period may be waived for good cause.
 - (b) Appeals shall be administered in accordance with the provisions of Chapter IV of the Administrative Procedures Act, 1969 PA 306, MCL 24.271-24.287 and MERS 401(a) Plan Document Section 72(3).
 - (c) A Participant must exhaust his or her administrative remedies under this Article before seeking judicial review.
- 20.5. **Report to Board Concerning Claims and Appeals.** The Program Administrator shall inform the Board of any appeal under this Article.

ARTICLE XXI - AMENDMENT OF THE PLAN

- 21.1 **Amendment of the Master Plan.** Subject to the provisions of any applicable law, the Board upon (or without) request by the Program Administrator may at any time amend or modify this Master Plan without the consent of the Participating Employers or of Participants (or any Beneficiaries thereof). Any modification, alteration, or amendment of the Master Plan, made in accordance with this Section, may be made retroactively, if deemed necessary or appropriate by the Board. A fully executed copy of the resolution of the Board making such amendment shall be delivered to the Program Administrator, and the Master Plan shall be amended in the manner and effective as of the date set for in such resolution, and the Participating Employers, Employees, Participants, Beneficiaries, Board, and the Program Administrator shall be bound by the amendment. A Participating Employer may not amend the Master Plan in any way.
- 21.2. **Amendment for Eligible Plan Status.** It is the intent of the Board that the Plan shall be and remain an eligible plan under the provisions of Code Section 457 and that the Trust be exempt from tax under Code Section 457. The Board may, in its discretion, submit the Master Plan for approval under the Code and all expenses incident thereto shall be borne by the Trust. The Board may make any modifications, alterations, or amendments to the Master Plan or Adoption Forms necessary to obtain and retain approval of the Secretary of the Treasury or his delegate as may be necessary to establish and maintain the status of the Plan as an eligible plan under the Code or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder. Any modification, alteration, or amendment of the Master Plan or Adoption Forms made in accordance with this Section, may be made retroactively, if necessary or appropriate. A fully executed copy of the resolution of the Board making such amendment shall be delivered to the Program Administrator, and the Master Plan, and Adoption Forms shall be amended in the manner and effective as of the date set forth in such resolution, and the Participating Employers, Participants, Beneficiaries, Board, the Administrator and all others having any interest under the Plan shall be bound thereby.
- 21.3. **Amendment of Adoption Forms by Participating Employer.** The Governing Body shall have the right at any time to amend, in whole or in part, any or all of its elections under the Adoption Forms; provided, however, that no such amendment shall:
- (a) Deprive any Participant or Beneficiary of any of the benefits to which the Participant or Beneficiary is entitled under this Plan with respect to amounts credited prior to the effective date of the amendment; or

- (b) Authorize or permit any part of the Trust to be diverted to purposes other than for the exclusive benefit of Participants or their Beneficiaries; or
- (c) Become effective until approved by the Program Administrator. In order to be approved, any amendment must comply with all applicable state and federal laws, including Code Section 457(b), and the Master Plan. If the Program Administrator does not approve an amendment, the Program Administrator shall continue to administer the Plan as if such amendment had not been made.

21.4. **Effective Date of Amendments.** If an amendment limits or otherwise restricts the deferral or distribution rights of the Participants, the amendment shall become effective on the first day of the month following the giving of not less than forty five (45) days prior notice of the amendment. If the amendment was made by the Board, notice shall be deemed given when the amendment is provided to the office of the Program Administrator and is sent by the Program Administrator to each Participating Employer. If the amendment was made by the Participating Employer, notice shall be deemed given when the amendment is posted in the office of the Participating Employer and is sent to the Program Administrator. No amendments shall deprive any Participant of any of the benefits to which the Participant is entitled under this Plan with respect to amounts credited prior to the effective date of the amendment.

If the Plan is amended or modified, the Program Administrator shall nonetheless be responsible for the supervision and the payment of benefits resulting from amounts contributed prior to the amendment or modifications in accordance with this Article.

ARTICLE XXII - FROZEN PLANS AND PLAN TERMINATION

- 22.1. **Freezing Participation in the Plan.** A Participating Employer may freeze its participation in the Plan if it takes the following actions:
- (a) The Governing Body of the Participating Employer must pass a resolution freezing its Employees' rights to participate in the Plan.
 - (b) The resolution must specify when the Plan will be closed to any additional participation by Eligible Employees (including both Participants and Eligible Employees not participating), which date must be acceptable to the Program Administrator.
 - (c) The certified resolution must be submitted to the Program Administrator.

- (d) The Program Administrator shall determine whether the resolution complies with this Section, and all applicable federal and state laws, and shall determine an appropriate effective date for the freezing of Employer participation. The Program Administrator shall provide appropriate forms to the Participating Employer and the Participants to freeze ongoing participation. Distributions under the Plan of existing accounts to these Participants are subject to Article XII. However, if the Participating Employer requests a plan-to-plan transfer of Plan assets with respect to the Participating Employer's Employees who are Participants, the Program Administrator may in its reasonable discretion make or decline to make the transfer upon the terms and conditions set forth by the Program Administrator.

22.2. **Effect of Freezing Plan by Participating Employer.** In the case of the complete or partial freezing of the Plan by a Participating Employer, including freezing resulting from the discontinuance and/or delinquency of contributions, the affected portion of the Trust shall continue to be held pursuant to the direction of the Board, for the benefit of affected Participants pursuant to Article XII. The Plan shall remain in full effect with respect to each Participating Employer that does not freeze its participation in the Plan on behalf of its Employees, or whose participation is not frozen by the Board.

22.3. **Termination of Participation in the Plan.** A Participating Employer may terminate its participation in the Plan if it takes the following actions:

- (a) The Governing Body of the Participating Employer must pass a resolution terminating its participation in the Plan.
- (b) The resolution must specify when the Plan will be closed to any participation by Eligible Employees (including both Participants and Eligible Employees not participating), which date must be acceptable to the Program Administrator.
- (c) The certified resolution must be submitted to the Program Administrator.
- (d) The Program Administrator shall determine whether the resolution complies with this Section, and all applicable federal and state laws, and shall determine an appropriate effective date for the terminating of Employer participation. The Program Administrator shall provide appropriate forms to the Participating Employer and the Participants to terminate participation. Distributions under the Plan of existing accounts to these Participants are subject to Article XII. However, if the Participating Employer requests a plan-to-plan transfer of Plan assets with respect to the Participating Employer's

Employees who are Participants, the Program Administrator may in its reasonable discretion make or decline to make the transfer upon terms and conditions set forth by the Program Administrator.

- 22.4. **Discontinuance of Contributions.** The Program Administrator shall report to the Board any Participating Employer who fails to make contributions for a period of one (1) year or who fails to make timely contributions over a period of one (1) year, and at the discretion of the Board, the Participating Employer shall be deemed to have frozen participation.
- 22.5. **Change in Eligibility of Participating Employer.** An Employer that ceases to be an Employer as defined in Section 1.15 by reason of dissolution, privatization, merger or other reasons, may no longer be a Participating Employer. Upon cessation of eligibility, the Plan is terminated as to that Participating Employer, the last date for contributions and earnings to be credited to Participant Accounts must be within thirty (30) days of cessation of eligibility, and all Eligible Employees and each Participant of that Participating Employer's Plan will receive a distribution of his or her account balance as soon as is reasonably practicable, which may include an eligible rollover distribution as set forth in Article XV of this Master Plan Document, as applicable.
- 22.6. **Termination of the Entire Plan.** This Plan in its entirety may be terminated at any time by official action of the Board, with notice to all Participating Employers and Participants. The last date for contributions and earnings to be credited to Participant Accounts must be specified in the Board's official action and must be no sooner than ninety (90) calendar days after the adoption of the official action. In the event of a complete Plan termination, the Board must distribute all assets of the Trust to Participants and Beneficiaries as soon as administratively practicable after the termination of the Plan, pursuant to benefit options under Article XII.

ARTICLE XXIII - NONASSIGNABILITY

- 23.1. **Nonassignment.** No benefit which shall be payable out of the Trust to any Distributee shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Board or the Program Administrator, except to such extent as provided in Article XIII concerning Plan-Approved Domestic Relations Orders and transfers of Deemed IRAs pursuant to divorce, as provided below or as may be required by law.

- 23.2. **Indebtedness to Plan.** Notwithstanding Section 23.1, to the extent a Distributee is indebted to the Plan, for any reason, under any provision of this Plan and at the time a distribution is to be made to or for his benefit, such proportion of the amount distributed as shall equal such indebtedness shall be paid to the Plan, to apply against or discharge such indebtedness. Prior to making a payment, however, the Distributee must be given written notice by the Program Administrator that such indebtedness is to be deducted in whole or part from the Participant's Account. If the Distributee does not agree that the indebtedness is a valid claim against his Account, he shall be entitled to review the validity of the claim in accordance with procedures established by the Program Administrator.
- 23.3. **IRS Levy.** Notwithstanding Section 23.1, the Program Administrator may pay from a Participant's, alternate payee's or Beneficiary's Account the amount that the Program Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant, alternate payee or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant, alternate payee or Beneficiary.
- 23.4. **Federal Restitution Orders and Garnishments.** Notwithstanding Section 23.1, the Program Administrator may pay from a Participant's, alternate payee's or Beneficiary's Account the amount that the Program Administrator finds is lawfully demanded under a federal restitution order or garnishment issued by the federal government with respect to that Participant, alternate payee or Beneficiary or is sought to be collected by the United States Government under a judgment against the Participant, alternate payee or Beneficiary.
- 23.5. **Declaratory Judgment or Interpleader Action.** In the event benefits are garnished or attached by order of any court, the Program Administrator may bring an action for a declaratory judgment or interpleader in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan. During the pendency of said action, any benefits that become payable shall be paid into the court at the direction of the court as they become payable, to be distributed by the court to the recipient it deems proper at the close of said action.

ARTICLE XXIV - MISCELLANEOUS

- 24.1. **Federal Taxes.** The Board, the Participating Employers, and the Program Administrator do not guarantee that any particular Federal or State income, payroll or other tax consequence will occur because of participation in this Plan.

- 24.2. **Contract.** This Plan, the Adoption Forms, the resolution, and any Applicable Form, including any properly adopted or executed amendments thereof, shall constitute the total agreement or contract between the Participating Employer and any Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by any Participant or other person.
- 24.3. **Conflicts.** In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that (i) causes the Plan to constitute an eligible plan under the provisions of Code Section 457 and the Trust to be exempt from tax under Code Section 457, (ii) causes the Plan to comply with all applicable requirements of the Code, and (iii) causes the Plan to comply with all applicable Michigan statutes and rules, shall prevail over any different interpretation.
- 24.4. **Limitation on Rights.** Neither the establishment or maintenance of the Plan (including the Adoption Forms or Applicable Forms), nor any amendment thereof nor any act or omission under the Plan (or resulting from the operation of the Plan) shall be construed:
- (a) As conferring upon any Participant, Beneficiary or any other person a right or claim against the Trust, Board, Participating Employer, or Program Administrator, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;
 - (b) As creating any responsibility or liability of the Participating Employer for the validity or effect of the Plan;
 - (c) As a contract between the Participating Employer and any Participant or other person;
 - (d) As being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Participating Employer or any Participant or other person to continue or terminate the employment relationship at any time; or
 - (e) As giving any Participant the right to be retained in the service of the Participating Employer or to interfere with the right of the Participating Employer to discharge any Participant or other person at any time.
- 24.5. **USERRA Compliance.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994

("USERRA") [as codified at Chapter 43, Title 38, of the United States Code]; Code Section 414(u); and Code Section 401(a)(37), as amended from time to time.

For purposes of this Section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

To the extent provided under Code Section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then, on the next day, terminated employment on account of death.

An Eligible Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) shall be entitled to receive any Employer contributions that he or she failed to receive as a result of his or her military service. Such Eligible Employee may also elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Eligible Employee could have elected during that period if the Eligible Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Eligible Employee during the period of the interruption or leave. If the Eligible Employee makes such additional Annual Deferrals, the Employer shall also make any Matching Contributions on behalf of the Eligible Employee on account of the additional Annual Deferrals in the amount required, if any, under Section 5.2. This right to receive Employer contributions and make Annual Deferrals applies during the period of military service and for either (i) five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave), or (ii) the period as otherwise allowed by federal or state law.

A Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the Employer, shall be treated as a Participant who is eligible to make Annual Deferrals and the differential wage payment shall be treated as Compensation under Section 1.09 and Includible Compensation under Section 1.19. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner. However, a Participant receiving differential pay from the Employer, during any

period of qualified military service, shall be treated as having a Severance from Employment for purposes of electing to take a distribution under Section 12.1. A Participant who elects a distribution from their Annual Deferral Account may not make an Annual Deferral with respect to differential wage payments during the 6-month period beginning on the date of the distribution.

- 24.6. **Procedure when Distributee Cannot be Located.** The Program Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary or alternate payee entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or the Program Administrator's records, (b) notification sent to the Social Security Administration or the Internal Revenue Service (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Program Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust shall continue to hold the benefits due such person.
- 24.7. **Erroneous Payments.** If the Board or Program Administrator make any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Board or Program Administrator may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Board or Program Administrator, from the person to whom it was made or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Board or Program Administrator may deduct it when making any future payments directly to that Participant.
- 24.8. **Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Program Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Program Administrator, to the Participating Employer.
- 24.9. **Release.** Any payment to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Board or Program Administrator may condition payment thereof on the delivery by the Participant of the duly executed receipt and release in such form as may be determined by the Board or Program Administrator.
- 24.10. **Liability.** The Program Administrator shall not incur any liability in acting upon any notice, request, signed letter, telegram or other paper or

document or electronic transmission believed by the Program Administrator to be genuine or to be executed or sent by an authorized person.

- 24.11. **Governing Laws.** The law of the State of Michigan, except to the extent pre-empted by federal law, shall apply in determining the construction and validity of this Plan.
- 24.12. **Necessary Parties to Disputes.** Necessary parties to any accounting, litigation or other proceedings relating to the Plan shall include only the Board and the Program Administrator. However, the Program Administrator is a necessary party for those duties that have been delegated to or performed by the Program Administrator. The settlement or judgment in any such case in which the Board is duly served shall be binding upon all affected Participants in the Plan, their beneficiaries, estates and upon all persons claiming by, through or under them.
- 24.13. **Severability.** If any provision of the Plan shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.
- 24.14. **Merger.** The terms of the Plan shall supersede any previous agreement between the parties pertaining to the Plan.
- 24.15. **Counterparts.** This Plan may be executed in one (1) or more counterparts, each of which shall constitute an original.

ARTICLE XXV - DEEMED IRA

- 25.1. **Applicability and effective date.** This Article XXV shall be effective June 1, 2018.
- 25.2. **Deemed IRAs.**
- (a) A Participant may make Voluntary Employee Contributions and Rollover Contributions to a Deemed IRA under the Plan. The Plan shall establish a separate Account for the Voluntary Employee Contributions to a Deemed Traditional IRA and/or Deemed Roth IRA of a Participant and any earnings properly allocable to such contributions, and maintain separate recordkeeping with respect to each such Deemed IRA. Each Deemed IRA is established for the exclusive benefit of the Participant and/or his or her Beneficiaries.
 - (b) In accordance with Code §§ 408 and 408A, a Participant may also establish a Deemed IRA for the benefit of his or her spouse (a “spousal IRA”), provided that the Participant and his or her spouse file a joint tax return. The spousal IRA will be a Deemed IRA that is established in the name of the spouse. The Employee or former

Employee who is eligible to be a Participant in the Deemed IRAs must establish a Deemed IRA in his or her own name prior to the establishment of a spousal IRA. Once established by the Participant, the spouse's rights and benefits under the spousal IRA will be subject to the terms of this Article in the same way as a Deemed IRA established in the name of a Participant.

- 25.3. **Procedures for Deemed IRAs.** Except as specifically provided by this Article XXV or by Code §§ 408 or 408A or by applicable Treasury Regulations, all procedural provisions of this Plan shall apply to the Deemed IRAs.
- 25.4. **Reporting Duties.** The Trustee shall be subject to the reporting requirements of Code § 408(i) with respect to all Deemed IRAs that are established and maintained under the Plan.
- 25.5. **Qualified Reservist Distributions.** A Participant who receives a qualified reservist distribution as defined in Code § 72(t)(2)(G)(iii) may, at any time during the two-year period beginning on the day after the end of his active duty period, make one or more contributions to a Deemed Traditional IRA or Deemed Roth IRA under this Article in an aggregate amount not to exceed the amount of his qualified reservist distribution, provided the contribution otherwise meets the requirements to be a voluntary employee contribution. The annual dollar limitations otherwise applicable to Deemed Traditional IRAs or Deemed Roth IRAs shall not apply to any contribution made pursuant to the preceding sentence.
- 25.6. **Establishment of Deemed IRAs.** Deemed IRAs established pursuant to this Article shall be held in a trust separate from the Trust established under the Plan to hold contributions other than Deemed IRA contributions. In any event, the Trust shall satisfy the applicable requirements of Code §§ 408 and 408A, which requirements are set forth in subsections 25.7 and 25.8.
- 25.7. **Deemed Traditional IRA Requirements.**
- (a) **Maximum Annual Contributions.**
- (1) The Administrator will accept Voluntary Employee Contributions as cash contributions only. Such contributions are limited to \$5,500 for the 2018 tax year, adjusted annually thereafter for cost-of-living increases. For a Participant who will reach the age of 50 before the close of the Plan Year, this contribution limit is increased to \$6,500 for the 2018 tax year, adjusted annually thereafter for cost-of-living increases. Voluntary Employee Contributions may be further limited by Code § 219. These contribution limits do not

apply in the case of a rollover contribution as described in Code §§ 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), an Employer contribution to a "simplified employee pension plan" as described in Code § 408(k) or a recharacterized contribution as described in Code § 408A(d)(6).

- (2) If this is an inherited IRA within the meaning of §408(d)(3)(C), no contributions will be accepted.

(b) **Investment Limitations.**

- (1) No part of the trust funds allocable to a Deemed Traditional IRA may be invested in collectibles (within the meaning of Code § 408(m)) except as otherwise permitted by Code § 408(m)(3), which provides an exception for certain gold, silver, and platinum coins, coins issued under the laws of any state, and certain bullion.
- (2) No part of the trust funds will be invested in life insurance contracts.
- (3) No contributions will be accepted under a SIMPLE IRA plan established by any Employer pursuant to Code § 408(p). Also, no transfer or rollover of funds attributable to contributions made by a particular Employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, a traditional IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the individual first participated in that Employer's SIMPLE IRA plan.

(c) **Minimum Required Distributions.**

- (1) Notwithstanding any provision of this Plan to the contrary, the distribution of the Participant's interest in the account shall be made in accordance with the requirements of Code § 408(a)(6) and the regulations thereunder, the provisions of which are herein incorporated by reference. The required minimum distributions calculated for this Deemed Traditional IRA may be withdrawn from another traditional IRA of the Participant in accordance with Q&A-9 of Treas. Reg. § 1.408-8. For an inherited IRA within the meaning of Code § 408(d)(3)(C), the preceding sentence and paragraphs (2), (3) and (4) below do not apply.

- (2) The entire value of the Deemed IRA of the Participant for whose benefit the Deemed IRA is maintained will commence to be distributed no later than the first day of April following the calendar year in which such Participant or Beneficiary attains age 70½ (if the Participant or Beneficiary attains age 70½ on or before December 31, 2019), or age 72 (if the Participant or Beneficiary attains age 70½ after December 31, 2019) (the "required beginning date") over (a) the life of such Participant or the lives of such Participant and his or her designated Beneficiary, or (b) a period certain not extending beyond the life expectancy of such Participant, or the joint and last survivor expectancy of such Participant and his or her designated Beneficiary.
- (3) The amount to be distributed each year, beginning with the calendar year in which the Participant attains age 70½ (if the Participant attains age 70½ on or before December 31, 2019), or age 72 (if the Participant attains age 70½ after December 31, 2019) and continuing through the year of death, shall not be less than the quotient obtained by dividing the value of the Deemed IRA (as determined under subsection 25.7(c)(7)) as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of Treas. Reg. § 1.401(a)(9)-9 of the Income Tax Regulations, using the Participant's age as of his or her birthday in the year. However, if the Participant's sole designated Beneficiary is his or her surviving spouse and such spouse is more than 10 years younger than the Participant, then the distribution period is determined under the Joint and Last Survivor Table in Q&A-3 of Treas. Reg. § 1.401(a)(9)-9, using the ages as of the Participant's and spouse's birthdays in the year.
- (4) The required minimum distribution for the year the Participant attains age 70½ (if the Participant attains age 70½ on or before December 31, 2019), or age 72 (if the Participant attains age 70½ after December 31, 2019) can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.
- (5) **Death On or After Required Beginning Date.** For a Participant who dies before January 1, 2022, if the Participant dies on or after the required beginning date, the remaining portion of his or her interest will be distributed at least as rapidly as follows:

- (A) If the designated Beneficiary is someone other than the Participant's surviving spouse, the remaining interest will be distributed over the remaining life expectancy of the designated Beneficiary, with such life expectancy determined using the Beneficiary's age as of his or her birthday in the year following the year of the Participant's death, or over the period described in subsection 25.7(c)(5)(C) below if longer.
- (B) If the Participant's sole designated Beneficiary is the Participant's surviving spouse, the remaining interest will be distributed over such spouse's life expectancy or over the period described in subsection 25.7(c)(5)(C) below if longer. Any interest remaining after such spouse's death will be distributed over such spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death, or, if the distributions are being made over the period described in subsection 25.7(c)(5)(C) below, over such period.
- (C) If there is no designated Beneficiary, or if applicable by operation of subsections 25.7(c)(5)(A) or (B) above, the remaining interest will be distributed over the Participant's remaining life expectancy determined in the year of the Participant's death.
- (D) The amount to be distributed each year under subsections 25.7(c)(5)(A), (B), and (C), beginning with the calendar year following the calendar year of the Participant's death, is the quotient obtained by dividing the value of the Deemed IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Treas. Reg. §1.401(a)(9)-9. If distributions are being made to a surviving spouse as the sole designated Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's or Participant's age in the year specified in subsections 25.7(c)(5)(A), (B), and (C) and reduced by 1 for each subsequent year.

- (6) **Death Before Required Beginning Date.** For a Participant who dies before January 1, 2022, if the Participant dies before the required beginning date, his or her entire interest will be distributed at least as rapidly as follows:
- (A) If the designated Beneficiary is someone other than the Participant's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Participant's death, over the remaining life expectancy of the designated Beneficiary, with such life expectancy determined using the age of the Beneficiary as of his or her birthday in the year following the year of the Participant's death, or, if elected, in accordance with subsection 25.7(c)(6)(C) below. If this is an inherited IRA within the meaning of Code § 408(d)(3)(C) established for the benefit of a nonspouse designated beneficiary by a direct trustee-to-trustee transfer from a retirement plan of a deceased individual under §402(c)(11), then, notwithstanding any election made by the deceased individual pursuant to the preceding sentence, the nonspouse designated beneficiary may elect to have distributions made under this subsection 25.7(c)(6)(A) if the transfer is made no later than the end of the year following the year of death.
- (B) If the Participant's sole designated beneficiary is the Participant's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Participant's death (or by the end of the calendar year in which the Participant would have attained age 70½ (if the Participant would have attained age 70½ on or before December 31, 2019), or age 72 (if the Participant would have attained age 70½ after December 31, 2019), if later), over such spouse's life expectancy, or, if elected, in accordance with subsection 25.7(c)(6)(C) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's designated beneficiary's remaining life expectancy determined using such beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with subsection 25.7(c)(6)(C) below. If the surviving

spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

- (C) If there is no designated Beneficiary, or if applicable by operation of subsections 25.7(c)(6)(A) or (B) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Participant's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under subsection 25.7(c)(6)(B) above).
 - (D) The amount to be distributed each year under subsections 25.7(c)(6)(A) and (B) is the quotient obtained by dividing the value of the Deemed IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Treas. Reg. § 1.401(a)(9)-9. If distributions are being made to a surviving spouse as the sole designated Beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary's age in the year specified in subsections 25.7(c)(6)(A) and (B) and reduced by 1 for each subsequent year.
- (7) **Death Before Entire Interest Distributed.** For a Participant who dies on or after January 1, 2022, his or her entire interest will be distributed at least as rapidly as follows:
- (A) If to a beneficiary who is not a Designated Beneficiary, the Participant's entire interest must be distributed by the end of the fifth Calendar Year following the year of the Participant's death.
 - (B) If to a Designated Beneficiary, the Participant's entire interest must be distributed by the end of the tenth Calendar Year following the year of the Participant's death.

- (C) If to an Eligible Designated Beneficiary, the Participant's entire interest may be paid over life or Life Expectancy of such Eligible Designated Beneficiary beginning in the year following the year of the Participant's death, except that, if the Eligible Designated Beneficiary is the surviving spouse of the Participant:
 - (i) the date on which the distributions are required to begin hereunder shall not be earlier than the date on which the Participant would have attained age 70½ (if the Participant would have attained age 70½ on or before December 31, 2019), or age 72 (if the Participant would have attained age 70½ after December 31, 2019), and
 - (ii) Any interest remaining after such spouse's death will be distributed over such spouse's remaining Life Expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death or, if the distributions are being made over the spouse's Life Expectancy, over such period.
- (D) An Eligible Designated Beneficiary who is a child of the Participant who has not reached the age of majority shall cease to be an Eligible Designated Beneficiary as of the date the individual reaches majority, and any remainder of the portion of the individual's interest to which subsection (C) applied shall be distributed within 10 years after such date.
- (E) After the death of an Eligible Designated Beneficiary, any remaining interest must be distributed by the end of the tenth Calendar Year following the year of the death of the Eligible Designated Beneficiary.
- (F) The term "Designated Beneficiary" means any individual designated as a beneficiary by the Participant. The term "Eligible Designated Beneficiary" means, with respect to any Participant, any Designated Beneficiary who is:
 - (i) the surviving spouse of the Participant,

- (ii) subject to subsection (iii) below, a child of the Participant who has not reached majority (within the meaning of IRC 401(a)(9)(F)),
- (iii) disabled (within the meaning of IRC 72(m)(7)),
- (iv) a chronically ill individual (within the meaning of IRC 7702B(c)(2), except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature), or
- (v) an individual not described in any of the preceding subclauses who is not more than 10 years younger than the Participant.

The determination of whether a Designated Beneficiary is an Eligible Designated Beneficiary shall be made as of the date of death of the Participant.

- (7) The "value" of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of Treas. Reg. § 1.408-8.
- (8) To the extent permitted under Code § 408(q) and the Treasury Regulations, if the sole designated Beneficiary is the Participant's surviving spouse, the spouse may elect to treat the Deemed IRA as his or her own Deemed IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the Deemed IRA or fails to take required distributions as a Beneficiary.
- (9) Notwithstanding anything herein to the contrary, the minimum distribution requirements are waived for calendar year 2020, pursuant to § 2203 of the Coronavirus Aid, Relief and Economic Security Act of 2020. This waiver applies to 2019 required minimum distribution that were required to be made by April 1, 2020 (if not already made in 2019), and to 2020 required minimum distributions that are required to be made by April 1, 2021. A participant or beneficiary who would have been required to receive a 2020 RMD will not receive this distribution unless the participant or beneficiary elects to receive the distribution. For purposes of determining the amount of required minimum distributions

made after 2020, an individual's required beginning date shall be determined without regard to this 2020 waiver. If all or any portion of a distribution during 2020 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under Code § 408(a)(6) had applied during 2020, such distribution shall not be treated as an eligible rollover distribution any purpose.

- (d) **Nonforfeitable.** The interest of a Participant or Beneficiary in the balance in his or her Deemed Traditional IRA is nonforfeitable at all times.
- (e) **No Commingling.** The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund within the meaning of Code § 408(a)(5).

25.8. Deemed Roth IRA Requirements.

- (a) **Maximum Annual Contributions.**
 - (1) **Maximum Permissible Amount.** Except in the case of a qualified rollover contribution (as defined in subsection 25.8(a)(7) below) or a recharacterization (as defined in 25.8(a)(6) below), no contribution will be accepted unless it is in cash and the total of such contributions to all the Participant's Roth IRAs for a taxable year does not exceed the applicable amount (as defined in 25.8(a)(2) below), or the Participant's compensation (as defined in 25.8(a)(8) below), if less, for that taxable year. The contribution described in the previous sentence that may not exceed the lesser of the applicable amount or the Participant's compensation is referred to as a "regular contribution." Contributions may be limited under subsections (2) through (6) below.
 - (2) **Applicable Amount.** The applicable amount is determined below, unless otherwise limited by Code § 219:
 - (A) If the Participant is under age 50, the applicable amount is \$5,500 for the 2018 tax year, adjusted annually thereafter for cost-of-living increases.
 - (B) If the Participant is age 50 or older or will reach the age of 50 by the close of the Plan Year, the applicable amount is \$6,500 for the 2018 tax year, adjusted annually thereafter for cost-of-living increases.

- (3) **Regular Contribution Limit.** If subsections 25.8(a)(3)(A) and/or (B) apply, the maximum regular contribution that can be made to all the Participant's Roth IRAs, including a Deemed Roth IRA, for a taxable year is the lesser amount determined under (A) or (B) below.
- (A) The maximum regular contribution is phased out ratably between certain levels of modified adjusted gross income ("modified AGI," as defined in Code § 408A(c)(3)(C)(i)). If the Participant's modified AGI for a taxable year is in the phase-out range, the maximum regular contribution determined by the applicable table published by the IRS for that taxable year is rounded up to the next multiple of \$10 and is not reduced below \$200.
- (B) If the Participant makes regular contributions to both Roth IRAs and traditional IRAs for a taxable year, the maximum regular contribution that can be made to all the Participant's Roth IRAs (including a Deemed Roth IRA) for that taxable year is reduced by the regular contributions made to the Participant's traditional IRAs for the taxable year.
- (4) **SIMPLE IRA Limits.** No contributions will be accepted under a SIMPLE IRA plan established by any Employer pursuant to Code § 408(p). Also, no transfer or rollover of funds attributable to contributions made by a particular Employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, a traditional IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the individual first participated in that Employer's SIMPLE IRA plan.
- (5) **Inherited IRA.** If this is an inherited IRA within the meaning of Code § 408(d)(3)(C), no contributions will be accepted.
- (6) **Recharacterization.** A regular contribution to a traditional IRA may be recharacterized pursuant to Treas. Reg. § 1.408A-5 as a regular contribution to this Deemed Roth IRA, subject to the limits in subsection 25.8(a)(3) above.
- (7) **Qualified Rollover Contribution.** A "qualified rollover contribution" is a rollover contribution of a distribution from an eligible retirement plan described in Code § 402(c)(8)(B). If the distribution is from an IRA, the rollover must meet the requirements of Code § 408(d)(3), except the one-rollover-

per-year rule of Code § 408(d)(3)(B) does not apply if the distribution is from a traditional IRA. If the distribution is from an eligible retirement plan other than an IRA, the rollover must meet the requirements of Code §§ 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3) or 457(e)(16), as applicable. A qualified rollover contribution also includes (A) and (B) below.

- (A) All or part of a military death gratuity or service members' group life insurance ("SGLI") payment may be contributed if the contribution is made within 1 year of receiving the gratuity or payment. Such contributions are disregarded for purposes of the one-rollover-per-year rule under Code § 408(d)(3)(B).
 - (B) All or part of an airline payment (as defined in §125 of the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), Pub. L. 110-458) received by certain airline employees may be contributed if the contribution is made within 180 days of receiving the payment.
- (8) **Compensation.** For purposes of subsection (1) above, compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in Code § 401(c)(2) (reduced by the deduction the self-employed individual takes for contributions made to a self-employed retirement plan) or such other income as set forth in IRC 219(f). For purposes of this definition, Code § 401(c)(2) shall be applied as if the term trade or business for purposes of Code § 1402(c)(6) included service. Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income (determined without regard to Code § 112). Compensation also does not include any amount received as a pension or annuity or as deferred compensation. In the case of a married individual filing a joint return, the greater compensation of his or her spouse is treated as his or her own compensation, but only to the extent that such spouse's compensation is not being used for purposes of the spouse making an IRA contribution. The

term “compensation” also includes any differential wage payments as defined in Code § 3401(h)(2).

(b) **Investment Limitations.**

- (1) No part of the trust funds allocable to a Deemed Roth IRA may be invested in collectibles (within the meaning of Code § 408(m)) except as otherwise permitted by Code § 408(m)(3), which provides an exception for certain gold, silver, and platinum coins, coins issued under the laws of any state, and certain bullion.
- (2) No part of the trust funds will be invested in life insurance contracts.

(c) **Distributions Before Death.** No amount is required to be distributed prior to the death of the Participant for whose benefit the account was originally established. If this is an inherited IRA within the meaning of Code § 408(d)(3)(C), this paragraph does not apply.

(d) **Distribution Upon Death.**

- (1) Notwithstanding any provision of this Deemed Roth IRA to the contrary, the distribution of the Participant's interest in the Account shall be made in accordance with the requirements of Code § 408(a)(6), as modified by § 408A(c)(5), and the regulations thereunder, the provisions of which are herein incorporated by reference.
- (2) For a Participant who dies before January 1, 2022, his or her entire interest will be distributed at least as rapidly as follows:
 - (A) If the designated Beneficiary is someone other than the Participant's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Participant's death, over the remaining life expectancy of the designated Beneficiary, with such life expectancy determined using the age of the Beneficiary as of his or her birthday in the year following the year of the Participant's death, or, if elected, in accordance with subsection 25.8(d)(2)(C) below. If this is an inherited IRA within the meaning of Code § 408(d)(3)(C) established for the benefit of a nonspouse designated beneficiary by a direct trustee-to-trustee transfer from a retirement plan of a deceased individual under Code § 402(c)(11), then, notwithstanding any election

made by the deceased individual pursuant to the preceding sentence, the nonspouse designated Beneficiary may elect to have distributions made under this subsection 25.8(d)(2)(A) if the transfer is made no later than the end of the year following the year of death.

- (B) If the Participant's sole designated beneficiary is the Participant's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Participant's death (or by the end of the calendar year in which the Participant would have attained age 70½ (if the Participant would have attained age 70½ on or before December 31, 2019), or age 72 (if the Participant would have attained age 70½ after December 31, 2019), if later), over such spouse's life expectancy, or, if elected, in accordance with subsection 25.8(d)(2)(C) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's designated beneficiary's remaining life expectancy determined using such beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with subsection 25.8(d)(2)(C) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.
- (C) If there is no designated Beneficiary, or if applicable by operation of subsections 25.8(d)(2)(A) or (B) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Participant's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under subsection 25.8(d)(2)(B) above).
- (D) The amount to be distributed each year under subsections 25.8(d)(2)(A) and (B) is the quotient obtained by dividing the value of the Deemed Roth IRA as of the end of the preceding year by the remaining life expectancy specified in such

paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Treas. Reg. § 1.401(a)(9)-9. If distributions are being made to a surviving spouse as the sole designated beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary's age in the year specified in subsections 25.8(d)(2)(A) and (B) and reduced by 1 for each subsequent year.

- (3) For a Participant who dies on or after January 1, 2022, his or her entire interest will be distributed at least as rapidly as follows:
 - (A) If to a beneficiary who is not a Designated Beneficiary, the Participant's entire interest must be distributed by the end of the fifth Calendar Year following the year of the Participant's death.
 - (B) If to a Designated Beneficiary, the Participant's entire interest must be distributed by the end of the tenth Calendar Year following the year of the Participant's death.
 - (C) If to an Eligible Designated Beneficiary, the Participant's entire interest may be paid over life or Life Expectancy of such Eligible Designated Beneficiary beginning in the year following the year of the Participant's death, except that, if the Eligible Designated Beneficiary is the surviving spouse of the Participant:
 - (i) the date on which the distributions are required to begin hereunder shall not be earlier than the date on which the Participant would have attained age 70½ (if the Participant would have attained age 70½ on or before December 31, 2019), or age 72 (if the Participant would have attained age 70½ after December 31, 2019), and
 - (ii) Any interest remaining after such spouse's death will be distributed over such spouse's

remaining Life Expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death or, if the distributions are being made over the spouse's Life Expectancy, over such period.

- (D) An Eligible Designated Beneficiary who is a child of the Participant who has not reached the age of majority shall cease to be an Eligible Designated Beneficiary as of the date the individual reaches majority, and any remainder of the portion of the individual's interest to which subsection (iii) applied shall be distributed within 10 years after such date.
- (E) After the death of an Eligible Designated Beneficiary, any remaining interest must be distributed by the end of the tenth Calendar Year following the year of the death of the Eligible Designated Beneficiary.
- (F) The term "Designated Beneficiary" means any individual designated as a beneficiary by the participant. The term "eligible designated beneficiary" means, with respect to any Participant, any designated beneficiary who is:
 - (i) the surviving spouse of the Participant,
 - (ii) subject to subsection (iii) below, a child of the Participant who has not reached majority (within the meaning of IRC 401(a)(9)(F)),
 - (iii) disabled (within the meaning of IRC 72(m)(7)),
 - (iv) a chronically ill individual (within the meaning of IRC 7702B(c)(2), except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature), or
 - (v) an individual not described in any of the preceding subclauses who is not more than 10 years younger than the participant.

The determination of whether a Designated Beneficiary is an Eligible Designated Beneficiary shall be made as of the date of death of the Participant.

- (4) The "value" of the Deemed Roth IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of Treas. Reg. § 1.408-8.
 - (5) If the sole designated Beneficiary is the Participant's surviving spouse, the spouse may elect to treat the Deemed Roth IRA as his or her own Deemed Roth IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the Deemed Roth IRA or fails to take required distributions as a Beneficiary.
 - (6) The required minimum distributions payable to a designated Beneficiary from this Deemed Roth IRA may be withdrawn from another IRA the Beneficiary holds from the same decedent in accordance with Q&A-9 of Treas. Reg. § 1.408-8.
 - (7) Notwithstanding anything herein to the contrary, the minimum distribution requirements are waived for calendar year 2020, pursuant to § 2203 of the Coronavirus Aid, Relief and Economic Security Act of 2020. This waiver applies to 2019 required minimum distribution that were required to be made by April 1, 2020 (if not already made in 2019), and to 2020 required minimum distributions that are required to be made by April 1, 2021. A participant or beneficiary who would have been required to receive a 2020 RMD will not receive this distribution unless the participant or beneficiary elects to receive the distribution. For purposes of determining the amount of required minimum distributions made after 2020, an individual's required beginning date shall be determined without regard to this 2020 waiver. If all or any portion of a distribution during 2020 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under Code § 408(a)(6) (as modified by Code § 408A(c)(5)) had applied during 2020, such distribution shall not be treated as an eligible rollover distribution any purpose.
- (e) **Rollovers Into Deemed Roth IRA.** Upon any distribution event pursuant to which a Participant, a spouse Beneficiary, or a spousal alternate payee would be permitted to have all or any portion of the Participant's Account that qualifies as an Eligible Rollover Distribution rolled over into another Eligible Retirement Plan, such Participant, spouse Beneficiary, or spousal alternate payee may

elect to have the portion of such Eligible Rollover Distribution that is not attributable to contributions to the Deemed Roth IRA directly rolled over into a separately maintained Account within his or her Deemed Roth IRA. Any such amounts will be included in gross income as if the distribution had been made to such Participant, surviving spouse Beneficiary, or spousal alternate payee.

(f) **Nonforfeitable.** The interest of a Participant or Beneficiary in the balance in his or her Deemed Roth IRA is nonforfeitable at all times.

(g) **No Commingling.** The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund within the meaning of Code § 408(a)(5).

25.9 **Construction.** Notwithstanding any other sections which may be added or incorporated, the provisions of this Article XXV and this sentence will be controlling with respect to each Deemed Traditional IRA and Deemed Roth IRA created under the Plan. Any additional sections inconsistent with the Code, the Treasury Regulations, and other published guidance will be invalid.