



# Governance Committee

Tuesday, May 24, 2022  
8:30 – 10:00 AM

Florida Polytechnic University  
Applied Research Center & via WebEx

Dial in: 1-415-655-0001 | Access code: 2439 193 8616#

## MEMBERS

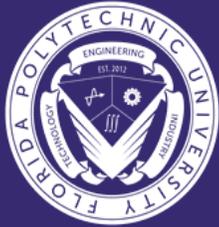
Mark Bostick, Chair  
Dr. Narendra Kini

Bob Stork, Vice Chair

Dr. Earl Sasser

## AGENDA

- |       |  |   |
|-------|--|---|
| I.    | Call to Order  | Mark Bostick, Chair   |
| II.   | Roll Call  | Sherri Pavlik   |
| III.  | Public Comment   | Mark Bostick  |
| IV.   | <a href="#">Approval of the February 9, 2022 Minutes</a><br>*Action Required*                                | Mark Bostick  |
| V.    | <a href="#">2020-22 Governance Committee Work Plan Review</a>  | Mark Bostick  |
| VI.   | <a href="#">President's Operational Goals FYE23</a><br>*Action Required*                                     | Dr. Randy K. Avent,<br>President                                |
| VII.  | <a href="#">Florida Polytechnic University Retirement Plan</a><br>*Action Required*                          | Alex Landback, Associate<br>General Counsel                     |
| VIII. | <a href="#">Florida Polytechnic University Board of Trustees Debt Management Policy</a><br>*Action Required* | Dr. Allen Bottorff, VP &<br>Chief Financial Officer             |
| IX.   | <a href="#">Florida Poly Finance Corporation</a><br>*Action Required*  | Melaine Schmiz, Associate<br>General Counsel                    |
| X.    | <a href="#">Slate of Officers for 2022-24</a><br>*Action Required*   | Mark Bostick  |
| XI.   | <a href="#">Board Training Needs</a><br>*Action Required*  | Kristen Wharton, Asst.<br>Secretary to the Board of<br>Trustees |
| XII.  | Closing Remarks and Adjournment  | Mark Bostick  |



# Governance Committee Meeting

## DRAFT MEETING MINUTES

**February 9, 2022  
2:15 PM – 3:15 PM**

### **Florida Polytechnic University WEBEX TELE-CONFERENCE MEETING**

#### I. Call to Order

Committee Chair Mark Bostick called the Governance Committee meeting to order at 2:15 p.m.

#### II. Roll Call

Sherri Pavlik called the roll: Committee Chair Mark Bostick, Committee Vice Chair Bob Stork, Trustee Narendra Kini, and Trustee Earl Sasser were present (Quorum)

Other Trustees present: Chair Cliff Otto and Trustee Beth Kigel

Staff present: President Randy Avent, Gina DeIulio, Kathy Bowman, David Blanton, David Calhoun, Andrew Konapelsky, Melaine Schmiz, Maggie Mariucci, Lydia Guzman, John Causey, Kris Wharton, Michele Rush, Kim Abels, and Sherri Pavlik

#### III. Public Comment

There were no requests received for public comment.

#### IV. Approval of Minutes

**Trustee Earl Sasser made a motion to approve the November 10, 2021 minutes. Vice Chair Bob Stork seconded the motion; a vote was taken, and the motion passed unanimously.**

#### V. 2018-20 Governance Committee Work Plan Review

Gina stated a change to Review of Board Bylaws due date was amended to 2024 as the committee reviewed them last year.

There were no other changes or comments.

#### VI. Nominations for Chair and Vice Chair

Committee Chair Bostick stated the terms of the Board of Trustees Chair and Vice-Chair expire on August 1, 2022 and that a formal recommendation to the Board needs to be presented at the May meeting.

In preparation for the May meeting, he opened the floor for discussion for nominees, stating as current Vice Chair, he is not interested in being considered for either the position of Chair or Vice Chair.

One consideration for Chair is to inquire if Chair Otto would consider a second term. Trustee Sasser and Trustee Stork agreed.

Chair Otto stated that he would continue as Chair, if elected.

The floor was then opened for discussions for potential Vice Chair nominations. Trustee Stork nominated Trustee Beth Kigel as Vice Chair. He stated that over the years of working with her he recognizes her professionalism, attention to details, and leadership in the transportation industry. She is highly respected and successful. Trustee Sasser seconded the nomination.

Trustee Kigel was honored by nomination and kind words and agreed to serve alongside of Chair Otto, if elected.

#### VII. 360° Review of the President

Committee Chair Bostick stated that on President Avent's third year of employment a 360° Review was completed and, according to policy, a comprehensive review normally occurs at five-year intervals thereafter.

Gina DeIulio provided more details on the 360° Review stating that as of a year ago only two other state universities in the SUS that do such a review and both had new presidents. She stated there is not a requirement for a comprehensive review, however it is in the Board of Trustees Policy on Annual Review of the President to be conducted normally every five years.

DeIulio reminded the committee that it is a several-month process, involving many interviews, and the last review cost \$36,000. She stated this is on the agenda today so that the committee can provide direction to staff.

The committee agreed that based on the current review of the president and the progress of the University, a 360° Review is not necessary this year. Chair Otto agreed stating the yearly review currently in place is on the rigorous side of current practices of other SUS institutions with long-standing presidents.

Trustee Kini stated a 360° Review would only be necessary if a substantive change in either external environment, operating plan, etc., occurred, and no such events have occurred.

**Vice Chair Bob Stork made a motion to recommend not to do a 360° Review of the President this year. Trustee Earl Sasser seconded the motion; a vote was taken, and the motion passed unanimously.**

#### VIII. Repeal of Policy on President's Authority to Execute Change Orders and Purchase Agreements related to FF&E for the ARC Project

DeIulio provided background on the adoption of the Policy on the President's Authority to Execute Change Orders and Purchase Agreements related to FF&E for the ARC Project and reminded the committee that it was adopted as a temporary policy while the Resolution and Powers and Duties of the President was being revised. The Board has since adopted

the revised Resolution which includes language that makes this policy unnecessary. Therefore, the policy should be repealed.

**Trustee Earl Sasser made a motion to recommend approval of the repeal of Policy on President's Authority to Execute Change Orders and Purchase Agreements related to FF&E for the ARC Project. Trustee Dr. Narendra Kini seconded the motion; a vote was taken, and the motion passed unanimously.**

IX. Closing Remarks and Adjournment

With no further comments, the meeting adjourned at 2:36 p.m.

**Florida Polytechnic University  
Governance Committee  
Board of Trustees  
May 24, 2022**

**Subject: Governance Committee Work Plan 2021-2022**

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**Proposed Committee Action**

No action required unless changes are requested.

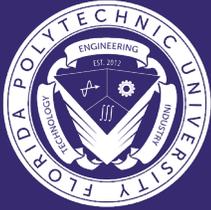
**Background Information**

Committee Chair Mark Bostick will review the Committee's 2021-2022 Committee Work Plan.

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**Supporting Documentation:** Governance Committee Work Plan 2021-2022

**Prepared by:** Gina DeIulio, VP & General Counsel



# Committee Work Plan

## Governance Committee Work Plan 2021-2022

### SEPTEMBER

- Review Governance Committee Charter (review every two years – due September 2022)
- Make recommendation on trustee evaluation instrument to be used for President’s annual review

### NOVEMBER

- Make recommendations to the Board on President’s evaluation outcome and compensation changes
- Make recommendation to Board on renewal of President’s employment agreement and any necessary changes to the agreement

### FEBRUARY

- Review Board Bylaws (review every 3 years – due 2024)
- Discuss nominations for Board Chair and Vice Chair (every 2 years - due February 2022)
- Oversee Board self-assessment (every 5 years – due February 2023)

### MAY

- Make recommendation to Board on President’s proposed goals for FY+1
- Discuss Board training needs
- Make recommendation on nominations for Board Chair and Vice Chair (every two years – due May 2022)

**Florida Polytechnic University  
Governance Committee  
Board of Trustees  
May 24, 2022**

**Subject: President's Operational Goals for FYE23**

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**Proposed Committee Action**

Review President's proposed Operational Goals for FYE23 to make a recommendation to the Board of Trustees.

**Background Information**

Pursuant to the Policy on Annual Review of the President, the Board of Trustees must set specific annual goals for the upcoming fiscal year.

The President submitted his Operational Goals FYE23 to Chair Otto and Committee Chair Bostick. The Governance Committee needs to discuss the goals with the President and approve the proposed goals so that they may be recommended to the Trustees for final approval.

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**Supporting Documentation:** Operational Goals FYE23

**Prepared by:** Dr. Randy K. Avent, President



**FLORIDA POLYTECHNIC**  
UNIVERSITY

## **Operational Goals FYE23**

**Randy K. Avent**

**24 May 2022**

# Accountability Metrics

	FY22	Peers	SUS Average	FY23
<b>RANKING</b>				
USNWR Regional	1			1
USNWR Engineering	26 (Public)			Top 20 (Public)
<b>DEGREE ALIGNMENT</b>				
% Graduates Employed or Enrolled	69.0%		72%	76%
Median Wages for BS Graduates	\$ 54,000		\$ 41,900	\$ 54,500
% BS Programs in Strategic Emphasis	100.0%	65%	60%	100.0%
% Grad Programs Strategic Emphasis	100.0%		54%	100%
<b>STUDENT SUCCESS</b>				
FTIC 4-year Graduate Rate	38%	40%	59%	42%
Academic Progress Rate	64%	81%	89%	75%
% HS students in top 10%	32%		38%	32%
% BS Degrees w/o Excess Hours	82%		82%	82%
6-Yr Graduation Rate	56%	68%	76%	49%
Time-to-Degree	4		4.1	4.1
<b>ECONOMIC DEVELOPMENT</b>				
% BS with 2+ Workforce Experiences	78%			85%
Research Expenditures (\$K)	\$ 1,091			\$ 1,013
Number BS Degrees Awarded	256	785		260
Number Grad Degrees Awarded	28	554		34
UG Headcount	1576			1668
G Headcount	57	3479		73
<b>AFFORDABILITY</b>				
Average Cost to Student	\$ (12,160)	\$ 50,454	\$ 3,020	\$ 5,000
University Access Rate	33%	22%	37%	32%

Grey text are metrics in the Accountability Report but not a part of PBF



# FY23 Operational Priorities

- **Grow the student body** **\$1,745,236**
- **Grow academic programs** **\$2,265,000**
- **Improve student outcomes**
- **Enhance the student campus experience** **\$2,077,723**
- **Improve operations** **\$954,273**
- **Invest in our people** **\$165,000**
- **Advance the University** **\$644,501**

# Grow the Student Body

- **Increase number of prospects in new markets**
  - Grow lead generation and digital marketing
  - Increase digital outreach to new social media platforms with targeted ads
  - Improve marketing for Graduate and Transfer students
  - Increase name buys for out-of-state students
  - Continuously update and improve the student web interface
- **Grow our targeted recruitment efforts**
  - Conduct parent enrollment marketing campaign
  - Provide peer-to-peer High School Calculus tutoring sessions
  - Increase STEM Tech days
- **Hold first annual summer STEM academy for underrepresented students**
- **Continue to invest in USNWR rankings**

# Grow Academic Programs

- **Position the institution to successfully transition to a new regional accrediting agency**
- **Conduct study to identify a minimum of three new programs that helps enrollment, diversity, and student outcomes (APR and graduation rates)**
- **Form internal working groups to begin implementation of two programs from the Accountability Report**
- **Develop a concentration roadmap that refreshes our concentrations with high-interest technologies in demand from students and employers**
- **Purchase necessary laboratory equipment to provide strong hands-on learning to all students in the ARC and IST**

# Improve Student Outcomes

- **Continued focus on more active role in advising students**
  - Freshman registration based on student high school performance
  - More active load balancing across semesters and providing recovery pathways
  - Provide freshman course guidelines aimed to improve retention
  - Move primary advising role from Academic Success Center to the faculty
- **Refine policies to improve retention, graduation rate, and student culture**
  - Modify policies to allow more flexibility and pathways to success
  - Refine and “advertise” the Academic Review Board
- **Continue the Peer Learning Strategy with the Learnwell Project**
- **Continue to focus on building a positive student culture that emphasizes leadership, responsibility, and student activity**

# Enhance the Student Campus Experience

- **Build enhanced Career Services office that provides leadership and professional development skills across the student body**
  - Grow the Industry Group for workforce alignment
- **Begin transition to University-owned residence life facility**
  - Conduct ITN\* to build a two-phased 700 room dorm on campus
  - Put processes in place to purchase existing residence hall(s)
  - Continue investigating interim housing solutions that provide capacity for Fall 2023
  - Provide additional student life services above Vestcor investment
- **Make important infrastructure investments**
  - Begin CAMS replacement with a more functional modern system
  - Provide campus-wide safety and security cameras
- **Improve student services across campus**
  - Conduct student communication survey
  - Develop an on-campus spirit store

# Improve Operations

- **Make critical infrastructure investments to improve operations**
  - Build decision support system for centralized data storage and analytics
  - Strengthen IT security stance with improved system backups, widespread use of multi-factor authentication for critical systems, and 3<sup>rd</sup> party testing for compliance
  - Implement an API-based platform that provides process-based real-time integration of multiple ERP applications
  - Transition our external network to existing dark fiber
- **Strengthen our Human Capital Management functions**
  - Hire new Assistant Vice President of HR
  - Complete the new Affirmative Action Plan with a template that can be duplicated in future reporting
  - Complete an organizational construct structure that provides consistency
  - Conduct an external compensation study to ensure our employees are fairly paid
- **Fund Public Safety to ensure full 24/7 coverage with a minimum of two officers**

# Invest in our People

- **Provide mentorships and grant writing programs to help faculty grow their research portfolios**
- **Contract with an online learning platform (Coursera) that provides access to courses and degrees across leading universities**
- **Provide specialized Line Management training opportunities for our leadership**

# Advance the University

- **Fund a strategic marketing study to understand pathways for improving our branding with critical audiences**
- **Centralize event management on campus to improve logistics, increase efficiency, and provide a more professional interaction**
- **Grow strategic relationships with Chambers, Economic Development Councils, ... within and outside of Polk County**
- **Continue conducting key visits (legislative, BOT, BOG, Industry, ...) to advance the University mission and prestige**

**Florida Polytechnic University  
Governance Committee  
Board of Trustees  
May 24, 2022**

**Subject: Florida Polytechnic University Retirement Plan**

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**Proposed Committee Action**

Recommend to the Board of Trustees the approval of the amended and restated plan documents for the Florida Polytechnic University Retirement Plan to be effective July 1, 2022.

**Background Information**

The Board of Trustees approved and adopted the Florida Polytechnic University Retirement Plan for purposes of providing a Supplement Retirement benefit for President Avent, as is required by his Employment Agreement; the Board designated the Governance Committee as the Plan Administrator.

To comply with recent legislative and regulatory changes, commonly known as Cycle 3, the following documents have been revised:

1. Adoption Agreement #001 – substantive change is listing the Governance Committee as the Plan Administrator under Section 2-7, consistent with the resolutions adopted at the time the Plan was first effective.
2. Secretary’s Certificate of Florida Polytechnic University containing resolutions adopting the amended and restated Plan.

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**Supporting Documentation:**

1. Draft – Nonstandardized Governmental Profit Sharing/401(k) Plan (“Adoption Agreement #001)
2. Draft – Certificate of the Chair of Florida Polytechnic University Board of Trustees

**Prepared by:** Alex Landback, Associate General Counsel

**CERTIFICATE OF THE CHAIR  
OF  
FLORIDA POLYTECHNIC UNIVERSITY  
BOARD OF TRUSTEES**

I **HEREBY CERTIFY** that I am the duly appointed Chair of The Florida Polytechnic University Board of Trustees (the "Board") and the following is a true and correct copy of the resolutions duly adopted at a meeting of the Board held on \_\_\_\_\_, 2022, and I further certify that said resolutions remain in full force and effect as of the date hereof and have not been amended or revised in any respect:

**WHEREAS**, Florida Polytechnic University (the "University") has previously adopted the Florida Polytechnic University Retirement Plan (the "Plan"); and

**WHEREAS**, the University is authorized and empowered to amend the Plan; and

**WHEREAS**, the University deems it advisable and in the best interests of the participants to amend and restate the Plan to comply with the requirements of the 2017 IRS Cumulative List (IRS Notice 2017-37), the American Taxpayer Relief Act of 2012, and the Tax Cuts and Jobs Act of 2017 and to make other desired changes (the "Cycle 3 Amendment and Restatement").

**NOW, THEREFORE, BE IT RESOLVED** that the Cycle 3 Amendment and Restatement of the Plan be, and it hereby is, ratified, approved, and adopted in all respects to be effective as of the dates set forth therein.

**BE IT FURTHER RESOLVED** that the appropriate officers be, and they hereby are, authorized and directed to execute such documents and to take such further steps as deemed necessary or desirable to implement these resolutions.

**IN WITNESS WHEREOF**, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**THE FLORIDA POLYTECHNIC UNIVERSITY  
BOARD OF TRUSTEES**

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

**NONSTANDARDIZED GOVERNMENTAL PROFIT SHARING/401(k) PLAN  
ADOPTION AGREEMENT #001**

By executing this Nonstandardized Governmental Profit Sharing/401(k) Plan Adoption Agreement (the "Adoption Agreement" or "AA"), the undersigned Employer agrees to establish or continue a Governmental Profit Sharing/401(k) Plan for its Employees. The Governmental Profit Sharing/401(k) Plan adopted by the Employer consists of the Governmental Defined Contribution Pre-Approved Plan Basic Plan Document #03 (the "BPD") and the elections made under this Adoption Agreement (collectively referred to as the "Plan"). An Employer may jointly co-sponsor the Plan by signing a Participating Employer Adoption Page, which is attached to this Adoption Agreement. **This Plan is effective as of the Effective Date identified on the Signature Page of this Adoption Agreement.**

**SECTION 1  
EMPLOYER INFORMATION**

**1-1 EMPLOYER INFORMATION.**

Name: Florida Polytechnic University

Address: 4700 Research Way

Lakeland, Florida 33805

Telephone: (863) 583-9050

**1-2 EMPLOYER IDENTIFICATION NUMBER (EIN).** 46-0764837

**1-3 FORM OF BUSINESS.**

State or political subdivision of a State

State agency or instrumentality

Indian Tribal Government

Describe other Employer qualified to adopt a Governmental Plan: \_\_\_\_\_

**1-4 EMPLOYER'S TAX YEAR END.** The Employer's tax year ends June 30

**1-5 RELATED EMPLOYERS.** Is the Employer part of a group of Related Employers (as defined in Section 1.83 of the Plan)?

Yes

No

If yes, Related Employers may be listed below. A Related Employer must execute a Participating Employer Adoption Page for Employees of that Related Employer to participate in this Plan.

\_\_\_\_\_  
[*Note: This AA §1-5 is for informational purposes and the Employer need not list Related Employers. The failure to identify all Related Employers will not jeopardize the qualified status of the Plan.*]

**SECTION 2  
PLAN INFORMATION**

**2-1 PLAN NAME.** Florida Polytechnic University Retirement Plan

Original Effective Date: July 1, 2017

Restatement Effective Date: July 1, 2021

**2-2 PLAN NUMBER.** 001

**2-3 TYPE OF PLAN.**

(a) This Plan is a Profit Sharing Plan. (*Note: May also include Matching Contributions under AA §6B.*)

(b) This Plan is a Grandfathered Profit Sharing/401(k) Plan. [*Note: To qualify as a Grandfathered Profit Sharing/401(k) Plan, the Employer must have maintained a 401(k) plan as of May 6, 1986. A Grandfathered Profit Sharing/401(k) Plan may also include a plan of an Indian Tribal Government, as defined in Section 1.58 of the Plan. See Section 1.55 of the Plan for a more detailed description of a Grandfathered Profit Sharing/401(k) Plan.*]

(c) The Plan is intended to be a FICA Replacement Plan (as described under Section 4.03 of the Plan). [*Note: If this subsection (c) is checked, elections under this AA must be consistent with the requirements of a FICA Replacement Plan as described under Section 4.03 of the Plan.*]

2-4 **PLAN YEAR.**

- (a) Calendar year.
- (b) The 12-consecutive month period ending on June 30 each year.
- (c) The Plan has a Short Plan Year running from \_\_\_\_ to \_\_\_\_.

2-5 **FROZEN PLAN.** Check this AA §2-5 if the Plan is a frozen Plan to which no contributions will be made.

- This Plan is a frozen Plan effective \_\_\_\_\_. (See Section 3.02(a)(2) of the Plan.)

[*Note: As a frozen Plan, the Employer will not make any contributions with respect to Plan Compensation earned after such date and no Participant will be permitted to make any contributions to the Plan after such date. In addition, no Employee will become a Participant after the date the Plan is frozen.*]

2-6 **MULTIPLE EMPLOYER PLAN.** Is this Plan a Multiple Employer Plan as defined in Section 16.07 of the Plan? (See Section 16.07 of the Plan for special rules applicable to Multiple Employer Plans.)

- Yes
- No

2-7 **PLAN ADMINISTRATOR.**

- (a) The Employer identified in AA §1-1.

(b) Name: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

2-8 **DEFINITION OF DISABLED.** An individual is considered Disabled for purposes of applying the provisions of this Plan if:

- (a) The individual is covered by the Employer's disability insurance plan and is determined to be disabled under such plan.
- (b) The individual is determined to be disabled by the Social Security Administration under Section 223(d) of the Social Security Act for purposes of determining eligibility for Social Security benefits.
- (c) The Plan Administrator determines an individual is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than 12 months. The permanence and degree of such impairment shall be supported by medical evidence. The Plan Administrator may establish reasonable procedures for determining whether a Participant is Disabled.

[*Note: An Employer may elect any or all of (a), (b) and (c) above. If more than one of (a), (b) and (c) is selected, the hierarchy for determining whether an individual is considered Disabled is (a), then (b) and then (c), unless described otherwise under separate administrative procedures or under subsection (d) below.*]

- (d) Alternative definition of Disabled: \_\_\_\_\_

[*Note: Any alternative definition described in this subsection (d) will apply uniformly to all Participants under the Plan and will be applied in a nondiscretionary manner. The Employer may describe different definitions of Disabled for different purposes under the plan.*]

**SECTION 3  
ELIGIBLE EMPLOYEES**

3-1 **ELIGIBLE EMPLOYEES.** In addition to the Employees identified in Section 2.02 of the Plan, the following Employees are excluded from participation under the Plan with respect to the contribution source(s) identified in this AA §3-1. See Sections 2.02(d) and (e) of the Plan for rules regarding the effect on Plan participation if an Employee changes between an eligible and ineligible class of employment.

- | Deferral                 | Match                    | ER                       |  |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (a) No exclusions  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (b) Collectively Bargained Employees   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (c) Non-resident aliens who receive no compensation from the Employer which constitutes U.S. source income |

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(d) Leased Employees
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(e) Employees paid on an hourly basis
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(f) Employees paid on a salaried basis
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) Employees in an elected or appointed position.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(h) Part-Time Employees (as defined in Section 1.71 of the Plan)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(i) Seasonal Employees (as defined in Section 1.89 of the Plan)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(j) Temporary Employees (as defined in Section 1.93 of the Plan)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(k) Employees eligible for another qualified plan sponsored by the Employer or a Related Employer Specify name of other qualified plan (optional): _____
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(l) Other: <u>All Employees other than the President of the Employer</u>

*[Note: The elections under the ER column apply to any Pick-Up Contributions and any After-Tax Employee Contributions authorized under AA §6-7, unless elected otherwise under subsection (l) above. The exclusions inserted may not result in a specifically named individual or a finite group (such as employees hired before a certain date) being the only employee or employees participating under the plan in violation of the permanency requirements or Treas. Reg. §1.401-1(b)(2). It is permissible to limit participation under the plan to an employee or employees of a specifically named position or positions.]*

**SECTION 4  
MINIMUM AGE AND SERVICE REQUIREMENTS**

4-1 **ELIGIBILITY REQUIREMENTS – MINIMUM AGE AND SERVICE.** An Eligible Employee (as defined in AA §3-1) who satisfies the minimum age and service conditions under this AA §4-1 will be eligible to participate under the Plan as of his/her Entry Date (as defined in AA §4-2 below).

(a) **Service Requirement.** An Eligible Employee must complete the following minimum service requirements to participate in the Plan.

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1) There is no minimum service requirement for participation in the Plan.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(2) ___ Year(s) of Service (as defined in Section 2.03(a)(1) of the Plan and AA §4-3).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(3) The completion of at least ___ Hours of Service during the first ___ months of employment (or the first ___ days of employment) or the completion of a Year of Service (as defined in AA §4-3), if earlier. <ul style="list-style-type: none"> <li><input type="checkbox"/> (i) An Employee who completes the required Hours of Service satisfies eligibility at the end of the designated period, regardless if the Employee actually works for the entire period.</li> <li><input type="checkbox"/> (ii) An Employee who completes the required Hours of Service must also be employed continuously during the designated period of employment. See Section 2.03(a)(2) of the Plan for rules regarding the application of this subsection (ii).</li> </ul>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(4) The completion of ___ Hours of Service during an Eligibility Computation Period. <i>[Note: An Employee satisfies the service requirement immediately upon completion of the designated Hours of Service rather than at the end of the Eligibility Computation Period.]</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(5) Full-time Employees are eligible to participate as set forth in subsection (i) below. Employees who are “part-time” Employees must complete a Year of Service (as defined in AA §4-3). For this purpose, a full-time Employee is any Employee not defined in subsection (ii) below. <ul style="list-style-type: none"> <li>(i) Full-time Employees must complete the following minimum service requirements to participate in the Plan:</li> </ul>

**Deferral      Match      ER**

- (A) There is no minimum service requirement for participation in the Plan.
- (B) The completion of at least \_\_\_\_ Hours of Service during the first \_\_\_\_ months of employment or the completion of a Year of Service (as defined in AA §4-3), if earlier.
- (C) Under the Elapsed Time method as defined in AA §4-3(c) below.
- (D) Describe: \_\_\_\_\_

*[Note: Any conditions provided under this subsection (D) must be definitely determinable.]*

- (ii) Part-time Employees must complete a Year of Service (as defined in AA §4-3). For this purpose, a part-time Employee is any Employee (including a temporary or seasonal Employee) whose normal work schedule is less than:

- (A) For this purpose, a part-time Employee is any Employee (including a temporary or seasonal Employee) whose normal work schedule is less than:
  - (I) \_\_\_\_ hours per week.
  - (II) \_\_\_\_ hours per month.
  - (III) \_\_\_\_ hours per year.
- (B) Describe part-time Employees for this purpose: \_\_\_\_\_

*[Note: A part-time employee must be described as an individual who works less than a specified number of hours (no greater than 40) during a standard work week.]*

- |                          |                          |                          |   |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (6) Under the Elapsed Time method as described in AA §4-3(c) below. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | (7) Describe eligibility conditions: _____                          |

- (b) **Minimum Age Requirement.** An Eligible Employee (as defined in AA §3-1) must have attained the following age with respect to the contribution source(s) identified in this AA §4-1(b).

**Deferral      Match      ER**

- |                          |                          |                                     |   |
|--------------------------|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | (1) There is no minimum age for Plan eligibility. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | (2) Age 21.                                       |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | (3) Age ____.                                     |

- (c) **Special eligibility rules.** The following special eligibility rules apply with respect to the Plan: \_\_\_\_\_

*[Note: Any elections under the ER column under this AA §4-1 apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions authorized under AA §6-7, unless elected otherwise under subsection (c) above. Subsection (c) above may be used to apply the eligibility conditions selected under this AA §4-1 separately with respect to different Employee groups or different contribution formulas under the Plan. Any special rules under subsection (c) above must be definitely determinable.]*

- 4-2 **ENTRY DATE.** An Eligible Employee (as defined in AA §3-1) who satisfies the minimum age and service requirements in AA §4-1 shall be eligible to participate in the Plan as of his/her Entry Date. For this purpose, the Entry Date is the following date with respect to the contribution source(s) identified under this AA §4-2.

**Deferral      Match      ER**

- |                          |                          |                                     |  |
|--------------------------|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | (a) <b>Immediate.</b> The date the minimum age and service requirements are satisfied (or date of hire, if no minimum age and service requirements apply). |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | (b) <b>Semi-annual.</b> The first day of the 1st and 7th month of the Plan Year.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | (c) <b>Quarterly.</b> The first day of the 1st, 4th, 7th and 10th month of the Plan Year.  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | (d) <b>Monthly.</b> The first day of each calendar month.  |

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(e) <b>Payroll period.</b> The first day of the payroll period.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(f) <b>The first day of the Plan Year.</b>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) Describe Entry Date: _____ [ <i>Note: Entry Date under this subsection (g) must be no later than 3 years after the date described under (a).</i> ]

An Eligible Employee’s Entry Date (as defined above) is determined based on when the Employee satisfies the minimum age and service requirements in AA §4-1. For this purpose, an Employee’s Entry Date is the Entry Date:

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(h) <b>next following</b> satisfaction of the minimum age and service requirements.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(i) <b>coinciding with or next following</b> satisfaction of the minimum age and service requirements.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(j) <b>nearest</b> the satisfaction of the minimum age and service requirements.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(k) <b>preceding</b> the satisfaction of the minimum age and service requirements.

This section may be used to describe any special rules for determining Entry Dates under the Plan. For example, if different Entry Date provisions apply for the same contribution sources with respect to different groups of Employees, such different Entry Date provisions may be described below.

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(l) <b>Describe</b> any special rules that apply with respect to the Entry Dates under this AA §4-2: _____

[*Note: The elections under the ER column under this AA §4-2 apply to any Pick-Up Contributions selected under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-7, unless elected otherwise under subsection (l) above. Any special rules under subsection (l) above must be definitely determinable.*]

4-3 **DEFAULT ELIGIBILITY RULES.** In applying the minimum age and service requirements under AA §4-1 above, the following default rules apply with respect to all contribution sources under the Plan:

- **Year of Service.** An Employee earns a Year of Service for eligibility purposes upon completing 1,000 Hours of Service during an Eligibility Computation Period. Hours of Service are calculated based on actual hours worked during the Eligibility Computation Period. (See Section 1.57 of the Plan for the definition of Hour of Service.)
- **Eligibility Computation Period.** If one Year of Service is required for eligibility, the Plan will determine subsequent Eligibility Computation Periods on the basis of Plan Years. (See Section 2.03(a)(3)(i) of the Plan). If more than one Year of Service is required for eligibility, the Plan will determine subsequent Eligibility Computation Periods on the basis of Anniversary Years. (See Section 2.03(a)(3)(ii) of the Plan.)

To override the default eligibility rules, complete the applicable sections of this AA §4-3. **If this AA §4-3 is not completed for a particular contribution source, the default eligibility rules apply.**

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(a) <b>Year of Service.</b> Instead of 1,000 Hours of Service, an Employee earns a Year of Service upon the completion of ____ Hours of Service during an Eligibility Computation Period.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(b) <b>Eligibility Computation Period (ECP).</b> The Plan will use Anniversary Years, unless more than one Year of Service is required under AA §4-1(a), in which case the Plan will shift to Plan Years if the Employee does not earn a Year of Service during the first Eligibility Computation Period. (See Section 2.03(a)(3)(ii) of the Plan.)

**Deferral      Match      ER**

(c) **Elapsed Time method.** Eligibility service will be determined under the Elapsed Time method. An Eligible Employee (as defined in AA §3-1) must complete a period of service, as designated below, to participate in the Plan. (See Section 2.03(a)(6) of the Plan.)

- (1) For Deferral, must complete a \_\_\_\_ period of service
- (2) For Match, must complete a \_\_\_\_ period of service
- (3) For ER, must complete a \_\_\_\_ period of service

*[Note: Under the Elapsed Time method, service will be measured from the Employee's employment commencement date (or reemployment commencement date, if applicable) without regard to the Eligibility Computation Period designated in Section 2.03(a)(3) of the Plan.]*

(d) **Equivalency Method.** For purposes of determining an Employee's Hours of Service for eligibility, the Plan will use the Equivalency Method (as defined in Section 2.03(a)(5) of the Plan). The Equivalency Method will apply to:

- (1) All Employees.
- (2) Only Employees for whom the Employer does not maintain hourly records. For Employees for whom the Employer maintains hourly records, eligibility will be determined based on actual hours worked.

Hours of Service for eligibility will be determined under the following Equivalency Method.

- (3) **Monthly.** 190 Hours of Service for each month worked.
- (4) **Weekly.** 45 Hours of Service for each week worked.
- (5) **Daily.** 10 Hours of Service for each day worked.
- (6) **Semi-monthly.** 95 Hours of Service for each semi-monthly period worked.
- (7) **Describe Equivalency Method:** \_\_\_\_\_

*[Note: Any description of an Equivalency Method under this subsection (7) must be definitely determinable.]*

(e) **Special eligibility provisions.** \_\_\_\_\_

*[Note: The elections under the ER column under this AA §4-3 apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-7, unless elected otherwise under subsection (e) above. Any special rules under subsection (e) above must be definitely determinable.]*

**4-4 EFFECTIVE DATE OF MINIMUM AGE AND SERVICE REQUIREMENTS.** The minimum age and/or service requirements under AA §4-1 apply to all Employees under the Plan. An Employee will participate with respect to all contribution sources under the Plan as of his/her Entry Date, taking into account all service with the Employer, including service earned prior to the Effective Date.

To allow Employees employed on a specified date to enter the Plan without regard to the minimum age and/or service conditions, complete this AA §4-4.

**Deferral      Match      ER**

An Eligible Employee who is employed by the Employer on the following designated date will enter the Plan on the designated date without regard to minimum age and/or service requirements (as designated below):

- (a) the Effective Date of this Plan (as designated in the Employer Signature Page).
- (b) the date the Plan is executed by the Employer (as indicated on the Employer Signature Page).
- (c) \_\_\_\_\_ *[insert date no earlier than the Effective Date of this Plan]*

An Eligible Employee who is employed on the designated date will enter the Plan on the designated date without regard to the minimum age and service requirements under AA §4-1. If both minimum age and service conditions are not waived, select subsection (d) or (e) below to designate which condition is waived under this AA §4-4.

- (d) This AA §4-4 only applies to the minimum service condition.
- (e) This AA §4-4 only applies to the minimum age condition.

The provisions of this AA §4-4 apply to all Eligible Employees employed on the

designated date unless designated otherwise under subsection (f) or (g) below.

(f) The provisions of this AA §4-4 apply to the following group of Employees employed on the designated date: \_\_\_\_\_

(g) Describe special rules: \_\_\_\_\_

*[Note: An Employee who is employed as of the designated date described in this AA §4-4 will enter the Plan as of such date unless a different Entry Date is designated under subsection (g) above. The elections under the ER column apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-7, unless elected otherwise under subsection (g) above. Any special rules under subsection (g) above must be definitely determinable.]*

4-5 **SERVICE WITH PREDECESSOR EMPLOYER.** Service with the following Predecessor Employers will be counted for purposes of determining eligibility, vesting and allocation conditions under this Plan, unless designated otherwise under subsection (a) or (b) below. (See Sections 2.06, 3.07(b) and 6.07 of the Plan.)

(a) The Plan will count service with the following Predecessor Employers:

	Eligibility	Vesting	Allocation Conditions
<input type="checkbox"/> (1) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(b) Describe any special provisions applicable to Predecessor Employer service: \_\_\_\_\_

4-6 **BREAKS IN SERVICE.** Generally, an Employee will be credited with all service earned with the Employer, including service earned prior to a Break in Service. To disregard service earned prior to a Break in Service for eligibility purposes, complete this AA §4-6. (See Section 2.07 of the Plan.)

(a) If an Employee incurs at least one Break in Service, the Plan will disregard all service earned prior to such Break in Service for purposes of determining eligibility to participate.

(b) If an Employee incurs at least \_\_\_\_\_ Breaks in Service, the Plan will disregard all service earned prior to such Break in Service for purposes of determining eligibility to participate. *[Enter "0" if prior service will be disregarded for all rehired Employees.]*

(c) The Nonvested Participant Break in Service rule applies to all Employees, including Employees who have not terminated employment.

(d) Describe: \_\_\_\_\_

**SECTION 5  
COMPENSATION DEFINITIONS**

5-1 **TOTAL COMPENSATION.** Total Compensation is based on the definition set forth under this AA §5-1. See Section 1.94 of the Plan for a specific definition of the various types of Total Compensation.

- (a) W-2 Wages
- (b) Code §415 Compensation
- (c) Wages under Code §3401(a)

*[Note: For purposes of determining Total Compensation, each definition includes Elective Deferrals as defined in Section 1.36 of the Plan, pre-tax contributions to a Code §125 cafeteria plan or a Code §457 plan, and qualified transportation fringes under Code §132(f)(4).]*

5-2 **POST-SEVERANCE COMPENSATION.** Total Compensation includes post-severance compensation, to the extent provided in Section 1.94(b) of the Plan, unless otherwise elected below.

(a) **Exclusion of post-severance compensation from Total Compensation.** The following amounts paid after a Participant's severance of employment are excluded from Total Compensation.

- (1) **Unused leave payments.** Payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued.
- (2) **Deferred compensation.** Payments received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the

Employee had continued in employment and only to the extent that the payment is includible in the Employee's gross income.

*[Note: Plan Compensation (as defined in Section 1.75 of the Plan) includes any post-severance compensation amounts that are includible in Total Compensation. The Employer may elect to exclude all compensation paid after severance of employment from the definition of Plan Compensation under AA §5-3(j) below or may elect to exclude specific types of post-severance compensation from Plan Compensation under AA §5-3(l) below.]*

- (b) **Continuation payments for disabled Participants.** If this subsection (b) is not elected, Total Compensation does not include continuation payments for disabled Participants. If this subsection (b) is elected, Total Compensation shall include post-severance compensation paid to a Participant who is permanently and totally disabled, as provided in Section 1.94(c) of the Plan.

**5-3 PLAN COMPENSATION.** Plan Compensation is **Total Compensation** (as defined in AA §5-1 above) with the following exclusions described below.

<b>Deferral</b>	<b>Match</b>	<b>ER</b>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(a) No exclusions.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(b) Elective Deferrals (as defined in Section 1.36 of the Plan), pre-tax contributions to a cafeteria plan or a Code §457 plan, and qualified transportation fringes under Code §132(f)(4) are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(c) All fringe benefits (cash and noncash), reimbursements or other expense allowances, moving expenses, deferred compensation, and welfare benefits are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(d) Compensation above \$___ is excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(e) Amounts received as a bonus are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(f) Amounts received as commissions are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) Overtime payments are excluded.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(h) Amounts received for services performed for a non-signatory Related Employer are excluded. (See Section 2.02(c) of the Plan.) <i>[Note: If this subsection (h) is not elected, amounts received for services performed for a non-signatory Related Employer are INCLUDED in Plan Compensation.]</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(i) "Deemed §125 compensation" as defined in Section 1.94(d) of the Plan.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(j) Amounts received after termination of employment are excluded. (See Section 1.94(b) of the Plan.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(k) Differential Pay (as defined in Section 1.94(e) of the Plan).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(l) Describe adjustments to Plan Compensation: _____

*[Note: Any modification under subsection (l) must be definitely determinable and preclude Employer discretion. The elections under the ER column under this AA §5-3 apply to any Pick-Up Contributions authorized under AA §6-1(d) and any After-Tax Employee Contributions selected under AA §6-7, unless elected otherwise under subsection (l).]*

**5-4 PERIOD FOR DETERMINING COMPENSATION.**

- (a) **Compensation Period.** Plan Compensation will be determined on the basis of the following period(s) for the contribution sources identified in this AA §5-4. *[Note: If a period other than the Plan Year applies for any contribution source, any reference to the Plan Year as it refers to Plan Compensation for that contribution source will be deemed to be a reference to the period designated under this AA §5-4.]*

<b>Deferral</b>	<b>Match</b>	<b>ER</b>	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1) The Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(2) The calendar year ending in the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(3) The Employer's fiscal tax year ending in the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(4) The 12-month period ending on _____ which ends during the Plan Year.

- (b) **Compensation while a Participant.** Unless provided otherwise under this subsection (b), in determining Plan Compensation, only compensation earned while an individual is a Participant under the Plan with respect to a particular contribution source will be taken into account.

To count compensation for the entire Plan Year for a particular contribution source, including compensation earned while an individual is not a Participant with respect to such contribution source, check below. (See Section 1.75(b) of the Plan.)

<b>Deferral</b>	<b>Match</b>	<b>ER</b>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	All compensation earned during the Plan Year will be taken into account, including compensation earned while an individual is not a Participant.

- (c) **Few weeks rule.** The few weeks rule (as described in Section 5.02(c)(7)(i) of the Plan) will not apply unless designated otherwise under this subsection (c).

Amounts earned but not paid during a Limitation Year solely because of the timing of pay periods and pay dates shall be included in Total Compensation for the Limitation Year, provided the amounts are paid during the first few weeks of the next Limitation Year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Employees, and no amounts are included in more than one Limitation Year.

**SECTION 6  
EMPLOYER AND EMPLOYEE CONTRIBUTIONS**

- 6-1 **EMPLOYER / EMPLOYEE CONTRIBUTIONS.** The Employer/Employee may make the following contributions under the Plan:

- (a) Employer Contributions under AA §6-2
- (b) Voluntary After-Tax Employee Contributions under AA §6-7(a)
- (c) Mandatory After-Tax Employee Contributions under AA §6-7(b)
- (d) Employer Pick-Up Contributions under AA §6-7(c)
- (e) N/A. No Employer/Employee Contributions are permitted under the Plan [*Skip to Section 6A*]

- 6-2 **EMPLOYER CONTRIBUTION FORMULA.** For the period designated in AA §6-5(a) below, the Employer will make the following Employer Contributions on behalf of Participants who satisfy the allocation conditions designated in AA §6-6 below. Any Employer Contribution authorized under this AA §6-2 will be allocated in accordance with the allocation formula selected under AA §6-3.

- (a) **Discretionary contribution.** The Employer will determine in its sole discretion how much, if any, it will make as an Employer Contribution.
- (b) **Fixed contribution.**
  - (1) **Fixed percentage.** 15 % of each Participant’s Plan Compensation.
  - (2) **Fixed dollar.** \$     for each Participant.
  - (3) **Determined in accordance with the terms of the Employment contract** between an Eligible Employee and the Employer. [*Note: If this subsection (3) is checked, the provisions of an Employment contract addressing retirement benefits will override any selection under this AA §6-2.*]
- (c) **Contributions under Collective Bargaining Agreement, employment contract or equivalent arrangement.** The Employer will make an Employer Contribution based on a Collective Bargaining Agreement, employment agreement or equivalent arrangement as follows: \_\_\_\_\_  

[*Note: Insert the appropriate contribution formula (and allocation formula, if applicable) from the Collective Bargaining Agreement, employment agreement or equivalent arrangement. The formula must be definitely determinable as required under Treas. Reg. §1.401-1.*]
- (d) **Service-based contribution.** The Employer will make the following contribution:
  - (1) **Discretionary.** A discretionary contribution determined as a uniform percentage of Plan Compensation for each period of service designated below.
  - (2) **Fixed percentage.**      % of Plan Compensation paid for each period of service designated below.
  - (3) **Fixed dollar.** \$     for each period of service designated below.

The service-based contribution will be based on the following periods of service:

- (4) Each Hour of Service
- (5) Each week of employment
- (6) Describe period: \_\_\_\_\_

The service-based contribution is subject to the following rules.

- (7) Describe any special provisions that apply to service-based contribution: \_\_\_\_\_
- (e) **Describe special rules for determining contributions under Plan:** \_\_\_\_\_

[*Note: Any special rules under this subsection (e) may only describe the basis for determining a discretionary service-based contribution, such as a uniform dollar amount, and must be definitely determinable.*]

### 6-3 ALLOCATION FORMULA.

- (a) **Pro rata allocation.** The discretionary Employer Contribution under AA §6-2(a) will be allocated:
  - (1) as a uniform percentage of Plan Compensation.
  - (2) as a uniform dollar amount.
- (b) **Fixed contribution.** The fixed Employer Contribution under AA §6-2 will be allocated in accordance with the selections made with respect to fixed Employer Contributions under AA §6-2.
- (c) **Permitted disparity allocation.** The discretionary Employer Contribution under AA §6-2(a) will be allocated under the two-step method (as defined in Section 3.02(a)(1)(i)(B)(I) of the Plan), using the Taxable Wage Base (as defined in Section 1.92 of the Plan) as the Integration Level.

To modify these default rules, complete the appropriate provision(s) below.

- (1) **Integration Level.** Instead of the Taxable Wage Base, the Integration Level is:
  - (i) \_\_\_\_% of the Taxable Wage Base, increased (but not above the Taxable Wage Base) to the next higher:
    - (A) N/A  (B) \$1
    - (C) \$100  (D) \$1,000
  - (ii) \$\_\_\_\_ (not to exceed the Taxable Wage Base)
  - (iii) 20% of the Taxable Wage Base

[*Note: See Section 3.02(a)(1)(i)(B)(IV) of the Plan for rules regarding the Maximum Disparity Rate that may be used where an Integration Level other than the Taxable Wage Base is selected.*]
- (2) **Describe special rules for applying permitted disparity allocation formula:** \_\_\_\_\_  
[*Note: Any special rules under subsection (2) must be definitely determinable.*]
- (d) **Uniform points allocation.** The discretionary Employer Contribution designated in AA §6-2(a) will be allocated to each Participant in the ratio that each Participant's total points bears to the total points of all Participants. A Participant will receive the following points:
  - (1) \_\_\_\_ point(s) for each \_\_\_\_ year(s) of age (attained as of the end of the Plan Year).
  - (2) \_\_\_\_ points for each \$\_\_\_\_ of Plan Compensation.
  - (3) \_\_\_\_ point(s) for each \_\_\_\_ Year(s) of Service. For this purpose, Years of Service are determined:
    - (i) In the same manner as determined for eligibility.
    - (ii) In the same manner as determined for vesting.
    - (iii) Points will not be provided with respect to Years of Service in excess of \_\_\_\_.
- (e) **Employee group allocation.** The Employer may make a separate discretionary Employer Contribution to the Participants in the following allocation groups. The Employer must notify the Trustee in writing of the amount of the contribution to be allocated to each allocation group.
  - (1) A separate discretionary Employer Contribution may be made to each Participant of the Employer (i.e., each Participant is in his/her own allocation group).
  - (2) A separate discretionary or fixed Employer Contribution may be made to the following allocation groups. If no fixed amount is designated for a particular allocation group, the contribution made for such allocation group will be allocated as a uniform percentage of Plan Compensation to all Participants within that allocation group, unless otherwise designated as a uniform dollar amount below.

- The contribution made for each allocation group will be allocated as a uniform dollar amount to all Participants within the allocation group.

**Group 1:** \_\_\_\_\_

[*Note: The Employee allocation groups designated above must be clearly defined in a manner that will not violate the definite allocation formula requirement of Treas. Reg. §1.401-1(b)(1)(ii).*]

- (3) **Special rules.** Unless designated otherwise under this subsection (3), if a Participant is in more than one allocation group described in (2) above during the Plan Year, the Participant will receive an Employer Contribution based on the Participant's status on the last day of the Plan Year. (See Section 3.02(a)(1)(i)(D) of the Plan.)

- (i) **Determined separately for each Employee group.** If a Participant is in more than one allocation group during the Plan Year, the Participant's share of the Employer Contribution will be based on the Participant's status for the part of the year the Participant is in each allocation group.

- (ii) **Describe:** \_\_\_\_\_

[*Note: This subsection (ii) may only describe the amount of the Employer Contribution a Participant will receive when such Participant is in more than one allocation group. Any language under this subsection (ii) must be definitely determinable.*]

- (f) **Age-based allocation.** The discretionary Employer Contribution designated in AA §6-2(a) will be allocated under the age-based allocation formula so that each Participant receives a pro rata allocation based on adjusted Plan Compensation. For this purpose, a Participant's adjusted Plan Compensation is determined by multiplying the Participant's Plan Compensation by an Actuarial Factor (as described in Section 1.03 of the Plan).

A Participant's Actuarial Factor is determined based on a specified interest rate and mortality table. Unless designated otherwise under subsection (1) or (2) below, the Plan will use an applicable interest rate of 8.5% and a UP-1984 mortality table.

- (1) **Applicable interest rate.** Instead of 8.5%, the Plan will use an interest rate of \_\_\_\_% (must be between 7.5% and 8.5%) in determining a Participant's Actuarial Factor.

- (2) **Applicable mortality table.** Instead of the UP-1984 mortality table, the Plan will use the following mortality table in determining a Participant's Actuarial Factor: \_\_\_\_\_

- (3) **Describe special rules applicable to age-based allocation:** \_\_\_\_\_

[*Note: See Appendix A of the Plan for sample Actuarial Factors based on an 8.5% applicable interest rate and the UP-1984 mortality table. If an interest rate or mortality table other than 8.5% or UP-1984 is selected, appropriate Actuarial Factors must be calculated. Subsection (3) must provide for a definitely determinable allocation method.*]

- (g) **Service-based allocation formula.** The service-based Employer Contribution selected in AA §6-2(d) will be allocated in accordance with the selections made in AA §6-2(d).

- (h) **Describe special rules for determining allocation formula:** \_\_\_\_\_

[*Note: Any special rules under this subsection (h) must be described in a manner that precludes Employer discretion.*]

6-4 **CONTRIBUTIONS OF ACCRUED SICK, PTO AND/OR VACATION LEAVE.** [*Note: Do not complete this AA §6-4 and instead use AA§6-7(c) if this is an Employer Pick-Up Contribution.*]

- (a) The Employer will make and allocate Employer Contributions of amounts of accrued unpaid sick leave, as described below: \_\_\_\_\_

- (b) The Employer will make and allocate Employer Contributions of amounts of accrued unpaid vacation leave, as described below: \_\_\_\_\_

[*Note: The Employer must describe an Employer Contribution of accrued unpaid sick, and/or vacation leave that meets the following requirements:*

- The leave converted under the arrangement can only be accrued unpaid leave;
- The leave converted can only be sick and/or vacation leave;
- The Employer must designate how often the conversions occur under this AA §6-4;
- The eligibility requirements for participation in the plan cannot be such that an Employee becomes a Participant only in the plan year in which the Employee terminates employment;

- *The only accrued unpaid leave which can be converted under the arrangement must only be leave for which the Employee has no right to request a cash payment;*
- *The leave conversion formula can only be one which involves multiplying an Employee's current daily rate of pay against the amount of accrued unpaid leave being converted; and*
- *The leave conversion formula is definitely determinable.]*

6-5 **SPECIAL RULES.** No special rules apply with respect to Employer/Employee Contributions under the Plan, except to the extent designated under this AA §6-5. Unless designated otherwise, in determining the amount of the Employer/Employee Contributions to be allocated under this AA §6, the contribution will be based on Plan Compensation earned during the Plan Year.

(a) **Period for determining Employer/Employee Contributions.** Instead of the Plan Year, Employer/Employee Contributions will be determined based on Plan Compensation earned during the following period: [**Note:** *The Plan Year must be used if the permitted disparity allocation method is selected under AA §6-3(c) above.*]

- (1) Plan Year quarter
- (2) calendar month
- (3) payroll period
- (4) Other: \_\_\_\_\_

[**Note:** *Although Employer Contributions are determined on the basis of Plan Compensation earned during the period designated under this subsection (a), this does not require the Employer to actually make contributions or allocate contributions on the basis of such period. Employer Contributions may be contributed and allocated to Participants at any time within the contribution period permitted under Treas. Reg. §1.415(c)-1(b)(6)(B), regardless of the period selected under this subsection (a).*]

(b) **Limit on Employer Contributions.** The Employer Contribution elected in AA §6-2 may not exceed:

- (1) \_\_\_% of Plan Compensation
- (2) \$\_\_\_
- (3) A discretionary amount determined by the Employer applied in a uniform manner for all eligible Participants for the Plan Year.

(c) **Offset of Employer Contribution.**

- (1) A Participant's allocation of Employer Contributions under AA §6-2 of this Plan is reduced by contributions under \_\_\_\_\_ [*insert name of plan(s)*]. (See Section 3.02(a)(1) of the Plan.)
- (2) In applying the offset under this subsection (c), the following rules apply: \_\_\_\_\_

(d) **Special rules:** \_\_\_\_\_

[**Note:** *Any special rules under this subsection (d) must be definitely determinable.*]

6-6 **ALLOCATION CONDITIONS.** A Participant must satisfy any allocation conditions designated under this AA §6-6 to receive an allocation of Employer Contributions under the Plan. [**Note:** *No allocation conditions apply to After-Tax Employee Contributions or Employer Pick-Up Contributions under AA §6-7.*]

(a) **No allocation conditions** apply with respect to Employer Contributions under the Plan.

(b) **Employment condition.** An Employee must be employed with the Employer on the last day of the Plan Year.

(c) **Minimum service condition.** An Employee must be credited with at least:

- (1) \_\_\_ Hours of Service during the Plan Year.
  - (i) Hours of Service are determined using actual Hours of Service.
  - (ii) Hours of Service are determined using the following Equivalency Method (as defined under Section 2.03(a)(5) of the Plan):
    - (A) Monthly  (B) Weekly
    - (C) Daily  (D) Semi-monthly
    - (E) Describe: \_\_\_\_\_

[**Note:** *Any description under this subsection (E) must be definitely determinable.*]

(2) \_\_\_ consecutive days of employment with the Employer during the Plan Year.

- (d) **Exceptions.**
- (1) The above allocation condition(s) will **not** apply if the Employee:
- (i) dies.
  - (ii) terminates employment due to becoming Disabled.
  - (iii) becomes Disabled.
  - (iv) terminates employment after attaining Normal Retirement Age.  
*[Note: This waiver of allocation conditions applies only once during the Participant's employment with the Employer. Thus, if an Employee is rehired after such a waiver was applied to such Employee, the waiver of allocation conditions will not apply to a subsequent termination of employment. The Employer may modify this rule in subsection (e) below.]*
  - (v) terminates employment after attaining Early Retirement Age.  
*[Note: This waiver of allocation conditions applies only once during the Participant's employment with the Employer. Thus, if an Employee is rehired after such a waiver was applied to such Employee, the waiver of allocation conditions will not apply to a subsequent termination of employment. The Employer may modify this rule in subsection (e) below.]*
  - (vi) is on an authorized leave of absence from the Employer.
- (2) The exceptions selected under subsection (1) above will apply even if an Employee has not terminated employment at the time of the selected event(s).
- (3) The exceptions selected under subsection (1) above do not apply to:
- (i) an employment condition under subsection (b) above.
  - (ii) a minimum service condition under subsection (c) above.
- (e) **Describe** any special rules governing the allocation conditions under the Plan: \_\_\_\_\_  
*[Note: Any special rules under this subsection (e) must be definitely determinable.]*

6-7 **AFTER-TAX EMPLOYEE CONTRIBUTIONS AND EMPLOYER PICK-UP CONTRIBUTIONS.**

- (a) **Voluntary After-Tax Employee Contributions.** If permitted under this subsection (a), a Participant may contribute any amount as Voluntary After-Tax Employee Contributions up to the Code §415 Limitation (as defined in Section 5.02 of the Plan), except as limited under this subsection (a).
- (1) **Limits on Voluntary After-Tax Employee Contributions.** If this subsection (1) is checked, the following limits apply to Voluntary After-Tax Employee Contributions:
- (i) **Maximum limit.** A Participant may make Voluntary After-Tax Employee Contributions up to:
    - (A) \_\_\_\_\_% of Plan Compensation
    - (B) \$\_\_\_\_\_for the following period:
    - (C) the entire Plan Year.
    - (D) the portion of the Plan Year during which the Employee is eligible to participate.
    - (E) each separate payroll period during which the Employee is eligible to participate.
  - (ii) **Minimum limit.** The amount of Voluntary After-Tax Employee Contributions a Participant may make for any payroll period may not be less than:
    - (A) \_\_\_\_\_% of Plan Compensation
    - (B) \$\_\_\_\_\_
- (2) **Change or revocation of Voluntary After-Tax Employee Contributions.** In addition to the Participant's Entry Date under the Plan, a Participant's election to change or resume an after-tax election will be effective as set forth under the After-Tax Employee Contributions election form or other written procedures adopted by the Plan Administrator. A Participant must be permitted to change or revoke an after-tax election at least once per year. Unless the After-Tax Employee Contributions election form or other written procedures adopted by the Plan Administrator provide otherwise, a Participant may revoke an after-tax election (on a prospective basis) at any time. Unless designated otherwise in a Participant's after-tax election form, a Participant's affirmative election to make an After-Tax Employee Contribution will cease upon termination of employment and the Participant will need to make a new election upon rehire.

- (3) **Other limits or special rules relating to Voluntary After-Tax Employee Contributions:** \_\_\_\_\_  
[*Note: Any limits described under this subsection (3) must be consistent with the provisions of Section 3.04 of the Plan.*]
- (b) **Mandatory After-Tax Employee Contributions.** If this subsection (b) is checked, Employees are required to make Mandatory After-Tax Employee Contributions in order to participate under the Plan.
- (1) **Amount of Mandatory After-Tax Employee Contributions.** Employees are required to contribute the following amount in order to participate in the Plan:
- (i) \_\_\_\_\_% of each Employee’s Total Compensation.
  - (ii) \$\_\_\_\_\_ for each Participant.
  - (iii) Describe rate or amount: \_\_\_\_\_
- (2) **Special rules** applicable to Mandatory After-Tax Employee Contributions: \_\_\_\_\_
- (c) **Employer Pick-Up Contributions.** Each Participant will be required to make a Pick-up Contribution to the Plan equal to the amount specified under this subsection (c). Any amounts contributed pursuant to this subsection (c) will be picked up by the Employer pursuant to Code §414(h) and will be treated as Employer Contributions under the Plan. Such contributions and earnings thereon will be 100% vested at all times. (See Section 3.03 of the Plan.)
- (1) The following amounts will be contributed to the Plan as an Employer Pick-Up Contribution:
- (i) \_\_\_\_\_% of Plan Compensation.
  - (ii) \$\_\_\_\_\_ per pay period.
  - (iii) Any amount from \_\_\_\_\_% to \_\_\_\_\_% of Plan Compensation, as designated by the Employee.  
[*Note: This subsection (iii) may only be selected if the Employee designates the amount as a one-time irrevocable election.*]
- (2) Elect this subsection (2) if an Employee may make a one-time irrevocable election not to make Employer Pick-Up Contributions under the Plan.
- (3) Special rules applicable to Employer Pick-Up Contributions: \_\_\_\_\_
- [*Note: Any Employer Pick-Up Contributions made under this subsection (c) must satisfy the requirements of Section 3.03 of the Plan. See AA §11-4 for an Employee’s ability to elect out of making Employer Pick-Up Contributions.*]

**SECTION 6A  
SALARY DEFERRALS**

- 6A-1 **SALARY DEFERRALS.** Are Employees permitted to make Salary Deferrals under the Plan?
- Yes.
  - No. [*If “No” is checked, skip to Section 6B.*]
- 6A-2 **MAXIMUM LIMIT ON SALARY DEFERRALS.** Unless designated otherwise under this AA §6A-2, a Participant may defer any amount up to the Elective Deferral Dollar Limit and the Code §415 Limitation (as set forth in Sections 5.02 and 5.03 of the Plan).
- (a) **Salary Deferral Limit.** A Participant may not defer an amount in excess of:
- (1) \_\_\_\_\_% of Plan Compensation.
  - (2) \$\_\_\_\_\_.
- [*Note: If both subsection (1) and (2) above are checked, the deferral limit is the lesser of the amounts selected.*]
- Any limit described in subsection (1) or (2) above applies with respect to the following period:
- (3) Plan Year.
  - (4) the portion of the Plan Year during which the individual is eligible to participate.
  - (5) each separate payroll period during which the individual is eligible to participate.
- (b) **Limits on deferrals on bonus payments.** [*Note: This §6A-2(b) only may be selected, if bonus payments are not excluded under AA §5-3.*]

- (1) The same limits specified in (a)(1) and (a)(2) above apply to bonus and non-bonus Plan Compensation, Employees may defer any amounts out of bonus payments, subject to the Elective Deferral Dollar Limit and the Code §415 Limitation (as defined in Sections 5.02 and 5.03 of the Plan) and any other limit on Salary Deferrals under this AA 6A-2. The Employer may impose special limits on bonus payments or may impose special limits on bonus payments under the Salary Deferral Election. (See Section 3.02(c)(2) of the Plan.)
- (2) A Participant may defer up to \_\_\_% (*not to exceed 100%*) of any bonus payment (subject to the Elective Deferral Dollar Limit and the Code §415 Limitation), without regard to any other limits described under this AA §6A-2. The Employer may impose special limits on bonus payments under the Salary Deferral Election. (See Section 3.02(c)(2) of the Plan.)
- (3) Describe special rules applicable to deferrals on bonus payments: \_\_\_\_\_

[*Note: If this subsection (b) is checked, bonus payments may not be excluded from Plan Compensation in the Deferral column under AA §5-3(e).*]

- (c) **Describe** any other limits that apply with respect to Salary Deferrals under the Plan: \_\_\_\_\_

6A-3 **MINIMUM DEFERRAL RATE.** Unless designated otherwise under this AA §6A-3, no minimum deferral requirement applies under the Plan. Alternatively, a Participant must defer at least the following amount in order to make Salary Deferrals under the Plan.

- (a) \_\_\_% of Plan Compensation for a payroll period.
- (b) \$\_\_\_ for a payroll period.
- (c) Describe: \_\_\_\_\_

[*Note: If more than one limit applies under this AA §6A-3, the minimum deferral rate is the lesser of the amounts designated under this AA §6A-3.*]

6A-4 **CATCH-UP CONTRIBUTIONS.** Catch-Up Contributions (as defined in Section 3.02(c)(2)(iv) of the Plan) are permitted under the Plan, unless designated otherwise under this AA §6A-4.

- Catch-Up Contributions are not permitted under the Plan.

6A-5 **ROTH DEFERRALS.** Roth Deferrals (as defined in Section 3.02(c)(2)(v) of the Plan) are not permitted under the Plan, unless designated otherwise under this AA §6A-5.

- (a) **Availability of Roth Deferrals.** Roth Deferrals are permitted under the Plan. [*Note: If Roth Deferrals are effective as of a date later than the Effective Date of the Plan, designate such special Effective Date in AA §6A-8(b) below. Roth Deferrals may not be made prior to January 1, 2006.*]
- (b) **Distribution of Roth Deferrals.** Unless designated otherwise under this subsection (b), to the extent a Participant takes a distribution or withdrawal from his/her Salary Deferral Account(s), the Participant may designate the extent to which such distribution is taken from the Pre-Tax Deferral Account or from the Roth Deferral Account. (As described under Section 7.11(b)(2) of the Plan for default distribution rules if a Participant fails to designate the appropriate Account for corrective distributions from the Plan, such distribution may be withdrawn equally from both the Pre-Tax Salary Deferral Account and the Roth Deferral Account or the Employer may withdraw such amounts first from either the Pre-Tax Salary Deferral Account or the Roth Deferral Account.)

Alternatively, the Employer may designate the order of distributions as listed below:

- (1) Any distribution will be taken on a pro rata basis from the Participant's Pre-Tax Deferral Account and Roth Deferral Account.
  - (2) Any distribution will be taken first from the Participant's Roth Deferral Account and then from the Participant's Pre-Tax Deferral Account.
  - (3) Any distribution will be taken first from the Participant's Pre-Tax Deferral Account and then from the Participant's Roth Deferral Account.
- (c) **In-Plan Roth Conversions.** Unless elected under this AA §6A-5(c), the Plan does not permit a Participant to make an In-Plan Roth Conversion under the Plan. To override this provision to allow Participants to make an In-Plan Roth Conversion, subsection (1) below must be checked.
    - (1) **Effective date.** Effective \_\_\_\_\_ [*not earlier than 1/1/2013*], a Participant may elect to convert all or any portion of his/her non-Roth vested Account Balance to an In-Plan Roth Conversion Account.

[**Note:** The Plan must provide for Roth Deferrals under AA §6A-5(a) above as of the effective date designated in this subsection (1). An election under this subsection (1) does not affect an In-Plan Roth Conversion that was allowed under prior Plan provisions.]

(2) **In-Service Distribution.**

(i) For a Participant to convert his/her eligible contributions to Roth Deferrals through an In-Plan Roth Conversion, the Participant need not be eligible to take a distribution from the Plan. [**Note:** If this subsection (i) is checked, a Participant may convert any or all of the eligible contribution sources to Roth Deferrals through an In-Plan Roth Conversion.]

(ii) For a Participant to convert his/her eligible contributions to Roth Deferrals through an In-Plan Roth Conversion, a Participant must be eligible for a distribution of any amounts converted to Roth Deferrals through an In-Plan Roth Conversion. Thus, only amounts that are eligible for distribution under AA §9 or AA §10 are eligible for In-Plan Roth Conversion.

(3) **Contribution sources.** An Employee may elect to make an In-Plan Roth Conversion from all available contribution sources under the Plan.

To override this default provision to limit the contributions sources available for In-Plan Roth Conversion, select the applicable contribution sources from which an In-Plan Roth Conversion is available:

(i) Pre-tax Salary Deferrals

(ii) Employer Contributions

(iii) Matching Contributions

(iv) After-Tax Contributions

(v) Rollover Contributions

(vi) Employer Pick-Up Contributions

(vii) Describe: \_\_\_\_\_

[**Note:** Any contribution sources described in this subsection (vii) must be definitely determinable and not subject to Employer discretion.]

(4) **Limits applicable to In-Plan Roth Conversions.** No limits apply with respect to In-Plan Roth Conversions, unless designated otherwise under this subsection (4).

(i) Roth conversions may only be made from contribution sources that are fully vested (i.e., 100% vested).

[**Note:** If an In-Plan Roth Conversion is permitted from partially-vested sources, special rules apply for determining the vested percentage of such amounts after conversion. See Section 6.09 of the Plan.]

(ii) A Participant may not make an In-Plan Roth Conversion of less than \$\_\_\_ (may not exceed \$1,000).

(iii) A Participant may not make an In-Plan Roth Conversion of any outstanding loan amount.

[**Note:** If this subsection (iii) is not checked, a Participant may convert amounts that are attributable to an outstanding loan, to the extent the loan relates to a contribution source that is eligible for conversion under subsection (3) above.]

(iv) Describe: \_\_\_\_\_

[**Note:** Any selection in this subsection (iv) must be definitely determinable and not subject to Employer discretion.]

(5) **Amounts available to pay federal and state taxes generated from an In-Plan Roth Conversion.** No special provisions apply to allow Participants to withdraw funds to pay federal or state taxes generated from an In-Plan Roth Conversion, except as provided otherwise under this subsection (5).

(i) **In-service distribution.** If the Plan does not otherwise permit an in-service distribution at the time of the In-Plan Roth Conversion and this subsection (i) is checked, a Participant may elect to take an in-service distribution solely to pay taxes generated from the In-Plan Roth Conversion to the extent such in-service distribution would otherwise be permitted under Section 7.10 of the Plan.

[**Note:** If this subsection (i) is checked, a Participant may take an in-service distribution only to the extent such distribution would otherwise be permitted under the provisions of Section 7.10 of the

*Plan. Thus, for example, a Participant may not take an in-service distribution of amounts attributable to Salary Deferrals prior to age 59½.*

- (ii) **Participant loan.** Generally, a Participant may request a loan from the Plan to the extent permitted under Section 13 of the Plan and AA §B. However, to the extent a Participant loan is not otherwise allowed and this subsection (ii) is selected, a Participant may receive a Participant loan solely to pay taxes generated from an In-Plan Roth Conversion.

*[Note: If this subsection (ii) is selected and Participant loans are not otherwise authorized under the Plan, any Participant loan made pursuant to this subsection (ii) will be made in accordance with the default loan policy described in Section 13 of the Plan.]*

- (6) **Distribution from In-Plan Roth Conversion Account.** Distributions from the In-Plan Roth Conversion Account will be permitted at the same time as permitted for Roth Deferrals, as set forth under AA §10-1, unless designated otherwise under this subsection (6).

- (i) In-service distributions will not be permitted from an In-Plan Roth Conversion Account.  
 (ii) An in-service distribution may be made from the In-Plan Roth Conversion Account at any time.  
 (iii) Describe distribution options: \_\_\_\_\_

- (d) **Describe** any special rules that apply to Roth Deferrals under the Plan: \_\_\_\_\_

#### 6A-6 SALARY DEFERRAL ELECTIONS.

- (a) **Change or revocation of deferral election:** In addition to the Participant's Entry Date under the Plan, a Participant's election to change or resume a deferral election will be effective as set forth under the Salary Reduction Agreement or other written procedures adopted by the Plan Administrator. A Participant must be permitted to change or revoke a deferral election at least once per year. Unless the Salary Reduction Agreement or other written procedures adopted by the Plan Administrator provide otherwise, a Participant may revoke a deferral election (on a prospective basis) at any time.
- (b) **Salary deferral elections of rehired participants:** Unless designated otherwise below, a Participant's affirmative election to defer (or to not defer) will cease upon termination of employment and the Participant will need to make a new election upon rehire.
- Participant's affirmative election does not cease upon termination of employment.** If this subsection (b) is selected, a terminated Participant's affirmative election to defer (or to not defer) **will not cease** upon termination of employment and the Participant's affirmative election to defer (or to not defer) in effect at the time of employment termination will apply upon rehire.

*[Note: The Employer may modify the rules applicable to rehired employees under the Salary Reduction Agreement or other administrative procedures.]*

#### 6A-7 AUTOMATIC CONTRIBUTION ARRANGEMENT. No automatic contribution provisions apply under Section 3.02(c)(2)(iii) of the Plan, unless provided otherwise under this AA §6A-7.

- (a) **Automatic deferral election.** Upon becoming eligible to make Salary Deferrals under the Plan (pursuant to AA §3 and AA §4), a Participant will be deemed to have entered into a Salary Deferral Election for each payroll period, unless the Participant completes a Salary Deferral Election (subject to the limitations under AA §6A-2 and AA §6A-3) in accordance with procedures adopted by the Plan Administrator.
- (1) **Effective date of Automatic Contribution Arrangement.** The automatic deferral provisions under this AA §6A-7 are effective as of:
- (i) The Effective Date of this Plan as set forth under the Employer Signature Page.  
 (ii) \_\_\_\_\_ *[insert date no earlier than the Effective Date of the Plan]*  
 (iii) As set forth under a prior Plan document. *[Note: If this subsection (iii) is checked, the automatic deferral provisions under this AA §6A-7 will apply as of the original Effective Date of the automatic contribution arrangement. Unless provided otherwise under this AA §6A-7, an Employee who is automatically enrolled under a prior Plan document will continue to be automatically enrolled under the current Plan document.]*
- (2) **Automatic Contribution Arrangement.** Check this subsection (2) if the Plan is designated as an Automatic Contribution Arrangement, as described under Section 3.02(c)(2)(iii) of the Plan. *[Note: Unless an election is made under this AA §6A-7 that is inconsistent with the requirements of an Eligible Automatic Contribution Arrangement (EACA), the Automatic Contribution Arrangement will qualify as an EACA, as described in Code §414(w).]*

- (i) **Automatic deferral amount.**
- (A) \_\_\_% of Plan Compensation.
- (B) \$\_\_\_\_\_.
- (ii) **Automatic increase.** If elected under this subsection (ii), the automatic deferral amount will increase each Plan Year by the following amount.
- (A) \_\_\_% of Plan Compensation.
- (B) \$\_\_\_\_\_.
- (C) If this (C) and subsection (3)(iii) below (relating to the expiration of affirmative deferral elections) are both elected, the automatic increase will apply to all Participants, including those Participants whose affirmative deferral elections have expired and no subsequent affirmative election is made.

Any automatic increase elected under this subsection (ii) will not cause the automatic deferral amount to exceed:

- (D) \_\_\_% of Plan Compensation.
- (E) \$\_\_\_\_\_.
- (F) Describe: \_\_\_\_\_

*[Note: Any special application of the automatic increase provisions must be definitely determinable and must provide for Employer discretion.]*

- (3) **Application of automatic deferral provisions.** The automatic deferral election under subsection (2) will apply to new Participants and existing Participants as set forth under this subsection (3):
- (i) **New Participants.** The automatic deferral provisions apply to all Participants who become eligible on or after the effective date.
- (ii) **Current Participants.** The automatic deferral provisions apply to all other eligible Participants as follows:
- (A) Automatic deferral provisions apply to all current Participants who have not entered into a Salary Deferral Election (including an election not to defer under the Plan).
- (B) Automatic deferral provisions apply to all current Participants who have not entered into a Salary Deferral Election that is at least equal to the automatic deferral amount under subsection (2)(i) above. Current Participants who have made a Salary Deferral Election that is less than the automatic deferral amount or who have not made a Salary Deferral Election will automatically be increased to the automatic deferral amount unless the Participant enters into a new Salary Deferral election on or after the effective date of the automatic deferral provisions.
- (C) Automatic deferral provisions do not apply to current Participants. Only new Participants described in subsection (i) above are subject to the automatic deferral provisions.
- (D) Describe: \_\_\_\_\_
- (iii) **Expiration of affirmative deferral elections.** Unless this subsection (iii) is elected, for purposes of the automatic deferral provisions of the Plan, a Participant's affirmative elective deferral election will not expire. If this subsection (iii) is elected, a Participant's affirmative deferral election will expire:
- (A) at the end of each Plan Year.
- (B) Describe date that the affirmative election will expire: \_\_\_\_\_
- [Note: The date must be definite and not discriminate in favor of Highly Compensated Employees.]*

If a Participant fails to complete a new affirmative deferral election subsequent to the prior election expiring, the Participant becomes subject to the automatic deferral percentage as specified in the Plan pursuant to the automatic contribution arrangement provisions. Each year, the Participant can always complete a new affirmative election and designate a new deferral percentage.

- (iv) **Treatment of automatic deferrals.** Any Salary Deferrals made pursuant to an automatic deferral election will be treated as Pre-Tax Salary Deferrals, unless designated otherwise under this subsection (iv).
- Any Salary Deferrals made pursuant to an automatic deferral election will be treated as Roth Deferrals. [*Note: This subsection (iv) may only be checked if Roth Deferrals are permitted under AA §6A-5.*]
- (v) **Special rules:** \_\_\_\_\_
- [*Note: Any Salary Deferral Election (including an election not to defer under the Plan) made after the effective date of the automatic deferral provisions will override such automatic deferral provisions.*]
- (4) **Application of automatic increase.** Unless designated otherwise under this subsection (4), if an automatic increase is selected under subsection (2)(i) above, the automatic increase will take effect as of the first day of the second Plan Year following the Plan Year in which the automatic deferral election first becomes effective with respect to a Participant.
- (i) **First Plan Year.** Instead of applying as of the second Plan Year, the automatic increase described in subsection (2)(i) above takes effect as of the appropriate date within the first Plan Year following the date automatic contributions begin.
- (ii) **Designated Plan Year.** Instead of applying as of the second Plan Year, the automatic increase described in subsection (2)(i) above takes effect as of the appropriate date within the \_\_\_\_ Plan Year following the Plan Year in which the automatic deferral election first becomes effective with respect to a Participant.
- (iii) **Effective date.** The automatic increase described under subsection (2)(i) above is generally effective as of the first day of the Plan Year. If this subsection (iii) is checked, instead of becoming effective on the first day of the Plan Year, the automatic increase will be effective on:
- (A) The anniversary of the Participant's date of hire.
- (B) The anniversary of the Participant's first automatic deferral contribution.
- (C) The first day of each calendar year.
- (D) Other date: \_\_\_\_\_
- (iv) **Special rules:** \_\_\_\_\_
- (5) **Treatment of terminated Employees who are rehired.** Unless designated otherwise below, in applying the automatic deferral provisions under this AA§6A-7, including the automatic increase provisions, a rehired Participant is treated as a new Employee (regardless of the amount of time since the rehired Employee terminated employment).
- (i) **Rehired Employees not treated as new Employee.** In applying the automatic deferral provisions under this AA§6A-7, including the automatic increase provisions, a rehired Participant is not treated as a new Employee. Thus, for example, a rehired Participant's deferral percentage will be calculated based on the date the individual first began making automatic deferrals under the Plan.
- (ii) **Describe special rules applicable to rehired employees:** \_\_\_\_\_
- [*Note: Any special rules under this subsection (ii) must satisfy the rules applicable to automatic enrollment under Treas. Reg. §1.401(k)-1, if applicable.*]
- (b) **Permissible Withdrawals under Automatic Contribution Arrangement.**
- (1) **Permissible withdrawals allowed.** An Employee who has Salary Deferrals contributed to the Plan pursuant to an automatic deferral election under this AA §6A-7 may elect to withdraw such contributions (and earnings attributable thereto) within 90 days after the date such Salary Deferrals would otherwise have been included in gross income, unless designated otherwise under subsection (3) below. Unless elected otherwise below, if an Employee does not make automatic deferrals to the Plan for an entire Plan Year (e.g., due to termination of employment), the Plan may allow such Employee to take a permissive withdrawal, but only with respect to default contributions made after the Employee's return to employment.).
- The ability to take permissible withdrawals does not apply to rehired Employees, even if such Employees have not made automatic deferrals to the Plan for an entire Plan Year due to termination of employment.
- (2) **No permissible withdrawals.** The permissible withdrawal provisions under this subsection (b) are not available.

- (3) **Time period for electing a permissible withdrawal.** Instead of a 90-day election period, a Participant must request a permissible withdrawal no later than \_\_\_\_ days after the date the Plan Compensation from which such Salary Deferrals are withheld would otherwise have been included in gross income.

(c) **Other automatic deferral provisions:** \_\_\_\_\_

6A-8 **SPECIAL DEFERRAL EFFECTIVE DATES.** Unless designated otherwise under this AA §6A-8, a Participant is eligible to make Salary Deferrals under the Plan as of the Effective Date of the Plan (as designated in the Employer Signature Page). However, in no case may a Participant begin making Salary Deferrals prior to the later of the date the Employee becomes a Participant, the date the Participant executes a Salary Reduction Agreement or the date the Plan is adopted or effective. (See Section 3.02(c)(2)(i) of the Plan.)

To designate a later Effective Date for Salary Deferrals or Roth Deferrals, complete this AA §6A-8.

- (a) **Salary Deferrals.** A Participant is eligible to make Salary Deferrals under the Plan as of:
- (1) the date the Plan is executed by the Employer (as indicated on the Employer Signature Page).
  - (2) \_\_\_\_ (insert date no earlier than the date the Plan is executed by the Employer).
- (b) **Roth Deferrals.** The Roth Deferral provisions under AA §6A-5 are effective as of \_\_\_\_\_. [If Roth Deferrals are permitted under AA §6A-5 above, Roth Deferrals are effective as of the Effective Date applicable to Salary Deferrals under this AA §6A-8, unless a later date is designated under this subsection.]

**SECTION 6B**  
**MATCHING CONTRIBUTIONS**

6B-1 **MATCHING CONTRIBUTIONS.** Is the Employer authorized to make Matching Contributions under the Plan?

- Yes.**
- No.** [If “No” is checked, skip to Section 7.]

6B-2 **MATCHING CONTRIBUTION FORMULA:** For the period designated in AA §6B-5 below, the Employer will make the following Matching Contribution on behalf of Participants who satisfy the allocation conditions under AA §6B-6 below. [See AA §6B-3 for the definition of Eligible Contributions for purposes of the Matching Contributions under the Plan.]

- (a) **Discretionary match.** The Employer will determine in its sole discretion how much, if any, it will make as a Matching Contribution. Such amount will be allocated as a uniform percentage of Eligible Contributions, unless designated otherwise below. (See AA §6B-5 relating to period for determining Matching Contributions and true-up requirements.)
- (1) Discretionary matching contributions will be allocated as a flat dollar amount.
  - (2) Allocation of discretionary Matching Contribution determined by written instructions to Plan Administrator (or Trustee). If a discretionary Matching Contribution formula applies (i.e., a formula that provides an Employer with discretion regarding how to allocate a Matching Contribution to Participants) and the Employer makes a discretionary Matching Contribution to the Plan, the Employer must provide the Plan Administrator (or Trustee, if applicable), written instructions describing: (1) how the discretionary Matching Contribution formula will be allocated to Participants (e.g., a uniform percentage of Eligible Contributions or a flat dollar amount), (2) the computation period(s) to which the discretionary Matching Contribution formula applies (unless otherwise designated under AA §6B-5), and (3) if applicable, a description of each business location or business classification subject to separate discretionary Matching Contribution allocation formulas.
- Such instructions must be provided no later than the date on which the discretionary Matching Contribution is made to the Plan. A summary of these instructions must be communicated to Participants who receive discretionary Matching Contributions no later than 60 days following the last date on which the discretionary Matching Contribution is made to the Plan for the Plan Year. If this AA §6B-2(a)(2) is elected, the written instruction requirement does not take effect until the first day of the Plan Year following the Plan Year in which this Plan’s Cycle 3 restatement is executed.
- (b) **Fixed match.** The Employer will make a Matching Contribution for each Participant equal to:
- (1) \_\_\_\_% of Eligible Contributions made for each period designated in AA §6B-5 below.
  - (2) \$\_\_\_\_ for each period designated in AA §6B-5 below.

- (c) **Matching Contributions under Collective Bargaining Agreement, employment contract or equivalent arrangement.** The Employer will make a Matching Contribution based on a Collective Bargaining Agreement, employment agreement or equivalent arrangement as follows: \_\_\_\_\_

[*Note:* Insert the appropriate Matching Contribution formula from the Collective Bargaining Agreement, employment agreement or equivalent arrangement. The formula must be definitely determinable as required under Treas. Reg. §1.401-1.]

- (d) **Tiered match.** The Employer may make a Matching Contribution to all Participants based on the following tiers of Eligible Contributions as a percentage of Plan Compensation. If discretionary Match is elected, the discretionary Matching Contribution will be allocated as a uniform percentage of Eligible Contributions within each tier.

Eligible Contributions	Fixed Match	Discretionary Match
<input type="checkbox"/> (1) Up to ___% of Plan Compensation	_____%	<input type="checkbox"/>
<input type="checkbox"/> (2) From ___% up to ___% of Plan Compensation	_____%	<input type="checkbox"/>
<input type="checkbox"/> (3) From ___% up to ___% of Plan Compensation	_____%	<input type="checkbox"/>
<input type="checkbox"/> (4) From ___% up to ___% of Plan Compensation	_____%	<input type="checkbox"/>

- (e) **Year of Service match.** The Employer will make a Matching Contribution as a uniform percentage of Eligible Contributions to all Participants based on Years of Service with the Employer. If discretionary Match is elected, the discretionary Matching Contribution will be allocated as a uniform percentage of Eligible Contributions within each Year of Service level.

Years of Service	Fixed Match	Discretionary Match
<input type="checkbox"/> (1) From ___ up to ___ Years of Service	_____%	<input type="checkbox"/>
<input type="checkbox"/> (2) From ___ up to ___ Years of Service	_____%	<input type="checkbox"/>
<input type="checkbox"/> (3) From ___ up to ___ Years of Service	_____%	<input type="checkbox"/>
<input type="checkbox"/> (4) From ___ up to ___ Years of Service	_____%	<input type="checkbox"/>
<input type="checkbox"/> (5) Years of Service equal to and above ____	_____%	<input type="checkbox"/>

For this purpose, a Year of Service is each Plan Year during which an Employee completes at least 1,000 Hours of Service. Alternatively, a Year of Service is: \_\_\_\_\_

[*Note:* Any alternative definition of a Year of Service must meet the requirements of a Year of Service as defined in Section 2.03(a)(1) of the Plan.]

- (f) **Different Employee groups.** The Employer may make a different Matching Contribution to the Employee groups designated under subsection (1) below. The Matching Contribution will be allocated separately to each designated Employee group in accordance with the formula designated under subsection (2) below.

(1) **Designated Employee groups.**

\_\_\_\_\_  
[*Note:* Each group designation must describe a group of Employees which is definitely determinable with no Employer discretion.]

(2) **Matching Contribution formulas.**

- (i) **Discretionary Matching Contribution.** The Employer may make a different discretionary Matching Contribution for each Employee group designated under subsection (1) above. The discretionary Matching Contribution will be allocated as a uniform percentage of Eligible Contributions within each Employee group. (See AA §6B-5 relating to period for determining Matching Contributions and true-up requirements.)

- (ii) **Different Matching Contribution formula.** The following Matching Contribution will apply for each Employee group designated under subsection (1) above.

[*Note:* Each separate rate of Matching Contribution must be definitely determinable and will be allocated uniformly to the members of the group.]

- (g) **Describe special rules for determining Matching Contribution formula:** \_\_\_\_\_

[*Note: Any special rules may not provide for a discretionary Matching Contribution allocation formula, must be described in a manner that precludes Employer discretion and must satisfy the definitely determinable requirements of Treas. Reg. §1.401-1.*]

6B-3 **ELIGIBLE CONTRIBUTIONS.** Unless designated otherwise under this AA §6B-3, the Matching Contribution described in AA §6B-2 will apply to all Eligible Contributions authorized under AA §6-7 and/or AA §6A.

- (a) **Designated Eligible Contributions.** If this subsection (a) is checked, the Matching Contribution described in AA §6B-2 will apply only to the Eligible Contributions selected below:
- (1) Pre-tax Salary Deferrals under AA §6A.
  - (2) Roth Deferrals under AA §6A-5.
  - (3) Catch-Up Contributions under AA §6A-4.
  - (4) Voluntary After-Tax Employee Contributions under AA §6-7(a).
  - (5) Mandatory After-Tax Employee Contributions under AA §6-7(b).
  - (6) Employer Pick-Up Contributions under AA §6-7(c).
- (b) **Elective deferrals under another plan.** If this subsection (b) is checked, the Matching Contributions described in AA §6B-2 will apply to elective deferrals made under another plan maintained by the Employer.
- (1) The Matching Contribution designated in AA §6B-2 above will apply to elective deferrals under the following plan maintained by the Employer: \_\_\_\_\_
  - (2) The following special rules apply in determining the amount of Matching Contributions under this Plan with respect to elective deferrals under the plan described in subsection (1) above: \_\_\_\_\_

[*Note: This subsection (b) may be used to describe special provisions applicable to Matching Contributions provided with respect to elective deferrals under another plan maintained by the Employer, including another qualified plan or Code §403(b) or Code §457(b) plan.*]

- (c) **Calculation of Matching Contributions if Plan uses dual eligibility and/or multiple entry dates.** Unless designated otherwise below, if the Plan has dual eligibility and/or multiple entry dates (or the Employer chooses to use the Plan's optional true-up provisions), the Matching Contribution formula(s) will be based on Eligible Contributions and Plan Compensation for the period designated under AA §6B-5.
- The Plan will make Matching Contributions only on Salary Deferrals and After-Tax Employee Contributions (if applicable) made after the Participant becomes eligible for Matching Contributions, regardless of the period designated under AA §6B-5.
- (d) **Special rules.** The following special rules apply for purposes of determining the Matching Contribution under this AA §6B-3: \_\_\_\_\_

[*Note: Any special rules under this subsection (d) must be definitely determinable.*]

6B-4 **LIMITS ON MATCHING CONTRIBUTIONS.** In applying the Matching Contribution formula(s) selected under AA §6B-2 above, all Eligible Contributions designated under AA §6B-3 are eligible for Matching Contributions, unless elected otherwise under this AA §6B-4.

- (a) **Limit on amount of Eligible Contributions.** The Matching Contribution formula(s) selected in AA §6B-2 above apply only to Eligible Contributions under AA §6B-3 that do not exceed:
- (1) \_\_\_\_\_% of Plan Compensation.
  - (2) \$\_\_\_\_\_.
  - (3) A discretionary amount determined by the Employer that will be applied in a uniform manner for all eligible Participants for the Plan Year.

[*Note: If both subsections (1) and (2) above are selected, the limit under this subsection (a) is the lesser of the percentage selected in subsection (1) or the dollar amount selected in subsection (2).*]

- (b) **Limit on Matching Contributions.** The total Matching Contribution provided under the formula(s) selected in AA §6B-2 above will not exceed:
- (1) \_\_\_\_\_% of Plan Compensation.
  - (2) \$\_\_\_\_\_.
- (c) **Special limits applicable to Matching Contributions:** \_\_\_\_\_

6B-5 **PERIOD FOR DETERMINING MATCHING CONTRIBUTIONS.** The Matching Contribution formula(s) selected in AA §6B-2 above (including any limitations on such amounts under AA §6B-4) are based on Eligible Contributions under AA §6B-3 and Plan Compensation for the Plan Year. To apply a different period for determining the Matching Contributions and limits under AA §6B-2 and AA §6B-4, complete this AA §6B-5.

- (a) payroll period
- (b) Plan Year quarter
- (c) calendar month
- (d) Other: \_\_\_\_\_

*[Note: Although Matching Contributions (and any limits on those Matching Contributions) will be determined on the basis of the period designated under this AA §6B-5, this does not require the Employer to actually make contributions or allocate contributions on the basis of such period. Matching Contributions may be contributed and allocated to Participants at any time within the contribution period permitted under Treas. Reg. §1.415(c)-1(b)(6)(B), regardless of the period selected under this AA §6B-5.]*

*[Note: In determining the amount of Matching Contributions for a particular period, if the Employer actually makes Matching Contributions to the Plan on a more frequent basis than the period selected in this AA §6B-5, a Participant will be entitled to a true-up contribution to the extent he/she does not receive a Matching Contribution based on the Eligible Contributions and/or Plan Compensation for the entire period selected in this AA §6B-5. If a period other than the Plan Year is selected under this AA §6B-5, the Employer may make an additional discretionary Matching Contribution equal to the true-up contribution that would otherwise be required if Plan Year was selected under this AA §6B-5. See Section 3.02(c)(3)(iii) of the Plan.]*

6B-6 **ALLOCATION CONDITIONS.** A Participant must satisfy any allocation conditions designated under this AA §6B-6 to receive an allocation of Matching Contributions under the Plan.

(a) **Application of allocation conditions.**

- (1) **No allocation conditions** apply with respect to Matching Contributions under the Plan.
- (2) Allocation conditions only apply to discretionary Matching Contributions under the Plan.
- (3) Allocation conditions only apply to fixed Matching Contributions under the Plan.

*[Note: (2) or (3) above should be selected only if the Plan provides for both Fixed and Discretionary Matching Contributions.]*

(b) **Employment condition.** An Employee must be employed with the Employer on the last day of the Plan Year.

(c) **Minimum service condition.** An Employee must be credited with at least:

- (1) \_\_\_\_\_ Hours of Service during the Plan Year.
  - (i) Hours of Service are determined using actual Hours of Service.
  - (ii) Hours of Service are determined using the following Equivalency Method (as defined under AA §4-3):
 

<input type="checkbox"/> (A) Monthly	<input type="checkbox"/> (B) Weekly
<input type="checkbox"/> (C) Daily	<input type="checkbox"/> (D) Semi-monthly
<input type="checkbox"/> (E) Describe: _____	

*[Note: Any description under subsection (E) above must be definitely determinable.]*

(2) \_\_\_\_\_ consecutive days of employment with the Employer during the Plan Year.

(d) **Exceptions.**

- (1) The above allocation condition(s) will **not** apply if the Employee, during the Plan Year:
  - (i) dies.
  - (ii) terminates employment due to becoming Disabled.
  - (iii) becomes Disabled.
  - (iv) terminates employment after attaining Normal Retirement Age.

*[Note: This waiver of allocation conditions applies only once during the Participant's employment with the Employer. Thus, if an Employee is rehired after such a waiver was applied to such Employee, the waiver of allocation conditions will not apply to a subsequent termination of employment. The Employer may modify this rule in (e) below.]*

(v) terminates employment after attaining Early Retirement Age.

[**Note:** This waiver of allocation conditions applies only once during the Participant’s employment with the Employer. Thus, if an Employee is rehired after such a waiver was applied to such Employee, the waiver of allocation conditions will not apply to a subsequent termination of employment. The Employer may modify this rule in (e) below.]

- (vi) is on an authorized leave of absence from the Employer.
- (2) The exceptions selected under subsection (1) above will apply even if an Employee has not terminated employment at the time of the selected event(s).
- (3) The exceptions selected under subsection (1) above do not apply to:
  - (i) an employment condition designated under subsection (b) above.
  - (ii) a minimum service condition designated under subsection (c) above.
- (e) **Describe** any special rules governing the allocation conditions under the Plan: \_\_\_\_\_

**SECTION 7  
RETIREMENT AGES**

7-1 **NORMAL RETIREMENT AGE.** Normal Retirement Age under the Plan is:

- (a) Age 65 (not to exceed 65).
- (b) The later of age \_\_\_\_ (not to exceed 65) or the \_\_\_\_ (not to exceed 5<sup>th</sup>) anniversary of:
  - (1) the Employee’s participation commencement date (as defined in Section 1.68 of the Plan).
  - (2) the Employee’s employment commencement date.
- (c) Describe Normal Retirement Age: \_\_\_\_\_

[**Note:** The Normal Retirement Age must be reasonably representative of the typical retirement age for the industry in which the Plan Participants work. A Normal Retirement Age of at least age 62 is deemed to be reasonable while a Normal Retirement Age under age 55 is presumed not to satisfy this requirement unless facts and circumstances show otherwise. Whether a Normal Retirement Age between 55 and 62 satisfies this requirement depends on the facts and circumstances. A Governmental Plan must comply with the final Normal Retirement Age regulations under Treas. Reg. §1.401(a)-1, as amended, effective for Annuity Starting Dates occurring in Plan Years beginning on or after the later of the two dates described in IRS Notice 2012-29. The Employer may use AA §7-1(c), for example, to describe a reasonable Normal Retirement Age that is between age 55 and 62 that takes into account service as well as age.]

7-2 **EARLY RETIREMENT AGE.** Unless designated otherwise under this AA §7-2, there is no Early Retirement Age under the Plan.

- (a) A Participant reaches Early Retirement Age if he/she is still employed after attainment of each of the following:
  - (1) Attainment of age \_\_\_\_
  - (2) The \_\_\_\_ anniversary of the date the Employee commenced participation in the Plan, and/or
  - (3) The completion of \_\_\_\_ Years of Service, determined as follows:
    - (i) Same as for eligibility.
    - (ii) Same as for vesting
- (b) **Describe.** \_\_\_\_\_

**SECTION 8  
VESTING AND FORFEITURES**

8-1 **CONTRIBUTIONS SUBJECT TO VESTING.** Does the Plan provide for any Employer and/or Matching Contributions that are subject to a vesting schedule under AA §8-2?

- Yes
- No [If “No” is checked, skip to Section 9.]

[**Note:** “Yes” should be checked under this AA §8-1 if the Plan provides for Employer Contributions and/or Matching Contributions that are subject to a vesting schedule, even if such contributions are always 100% vested under AA §8-2. “No” should be checked if the only contributions under the Plan are Salary Deferrals, After-Tax Employee Contributions and/or Employer Pick-Up Contributions. If the Plan holds Employer Contributions and/or Matching Contributions that are subject to

*vesting but the Plan no longer provides for such contributions, see Sections 6.03(d) and 6.11(e) of the Plan for default rules for applying the vesting and forfeiture rules to such contributions.]*

8-2 **VESTING SCHEDULE.** The vesting schedule under the Plan is as follows for both Employer Contributions and Matching Contributions, to the extent authorized under the Plan. See Section 6.02 of the Plan for a description of the various vesting schedules under this AA §8-2.

(a) **Vesting schedule for Employer Contributions and Matching Contributions:**

- | ER                                  | Match                    |  |
|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | (1) Full and immediate vesting.        |
| <input type="checkbox"/>            | <input type="checkbox"/> | (2) Three-year cliff vesting schedule  |
| <input type="checkbox"/>            | <input type="checkbox"/> | (3) Six-year graded vesting schedule   |
| <input type="checkbox"/>            | <input type="checkbox"/> | (4) Modified vesting schedule          |
|                                     |                          | ___% immediately on Plan participation |
|                                     |                          | ___% after 1 Year of Service           |
|                                     |                          | ___% after 2 Years of Service          |
|                                     |                          | ___% after 3 Years of Service          |
|                                     |                          | ___% after 4 Years of Service          |
|                                     |                          | ___% after 5 Years of Service          |
|                                     |                          | ___% after 6 Years of Service          |
|                                     |                          | ___% after 7 Years of Service          |
|                                     |                          | ___% after 8 Years of Service          |
|                                     |                          | ___% after 9 Years of Service          |
|                                     |                          | 100% after 10 Years of Service         |
| <input type="checkbox"/>            | <input type="checkbox"/> | (5) Other: vesting schedule: _____     |
- [Note: If a modified vesting schedule is selected under this subsection (a), the vested schedule must satisfy the pre-ERISA Code vesting requirements.]*

(b) **Special provisions applicable to vesting schedule:** \_\_\_\_\_

*[Note: This subsection (b) may be used to apply a different vesting schedule for different contribution formulas or different Employee groups under the Plan. Any special provision must satisfy the pre-ERISA Code vesting requirements.]*

8-3 **VESTING SERVICE.** In applying the vesting schedules under this AA §8, all service with the Employer counts for vesting purposes, unless designated otherwise under this AA §8-3.

- (a) Service before the original Effective Date of this Plan (or a Predecessor Plan) is excluded.
- (b) Service completed before the Employee's \_\_\_ birthday is excluded.
- (c) Describe vesting service exclusions: \_\_\_\_\_

*[Note: See Section 6.07 of the Plan and AA §4-5 for rules regarding the crediting of service with Predecessor Employers for purposes of vesting under the Plan.]*

8-4 **VESTING UPON DEATH, DISABILITY OR EARLY RETIREMENT AGE.** An Employee's vesting percentage increases to 100% if, while employed with the Employer, the Employee

- (a) dies
- (b) terminates employment due to becoming Disabled
- (c) becomes Disabled
- (d) reaches Early Retirement Age
- (e) Not applicable. No increase in vesting applies.

8-5 **DEFAULT VESTING RULES.** In applying the vesting requirements under this AA §8, the following default rules apply. [*Note: No election should be made under this AA §8-5 if all contributions are 100% vested.*]

- **Year of Service.** An Employee earns a Year of Service for vesting purposes upon completing 1,000 Hours of Service during a Vesting Computation Period. Hours of Service are calculated based on actual hours worked during the Vesting Computation Period. (See Section 1.57 of the Plan for the definition of Hour of Service.)
- **Vesting Computation Period.** The Vesting Computation Period is the Plan Year.

To override the default vesting rules, complete the applicable sections of this AA §8-5. If this AA §8-5 is not completed, the default vesting rules apply.

<b>ER</b>	<b>Match</b>	
<input type="checkbox"/>	<input type="checkbox"/>	(a) <b>Year of Service.</b> Instead of 1,000 Hours of Service, an Employee earns a Year of Service upon the completion of ___ Hours of Service during a Vesting Computation Period.
<input type="checkbox"/>	<input type="checkbox"/>	(b) <b>Vesting Computation Period.</b> Instead of the Plan Year, the Vesting Computation Period is: <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) The 12-month period beginning with the Employee’s Employment Commencement Date and, for subsequent Vesting Computation Periods, the 12-month period beginning with the anniversary of the Employee’s Employment Commencement Date.</li> <li><input type="checkbox"/> (2) Describe: _____</li> </ul> <p><i>[Note: Any Vesting Computation Period described in this subsection (2) must be a 12-consecutive month period and must apply uniformly to all Participants.]</i></p>
<input type="checkbox"/>	<input type="checkbox"/>	(c) <b>Elapsed Time Method.</b> Instead of determining vesting service based on actual Hours of Service, vesting service will be determined under the Elapsed Time Method. If this subsection (c) is checked, service will be measured from the Employee’s Employment Commencement Date (or Reemployment Commencement Date, if applicable) without regard to the Vesting Computation Period designated in Section 6.05 of the Plan. (See Section 6.04(b) of the Plan.)
<input type="checkbox"/>	<input type="checkbox"/>	(d) <b>Equivalency Method.</b> For purposes of determining an Employee’s Hours of Service for vesting, the Plan will use the Equivalency Method (as defined in Section 6.04(a)(2) of the Plan). The Equivalency Method will apply to: <ul style="list-style-type: none"> <li><input type="checkbox"/> (1) All Employees.</li> <li><input type="checkbox"/> (2) Only to Employees for whom the Employer does not maintain hourly records. For Employees for whom the Employer maintains hourly records, vesting will be determined based on actual hours worked.</li> </ul> <p>Hours of Service for vesting will be determined under the following Equivalency Method.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> (3) <b>Monthly.</b> 190 Hours of Service for each month worked.</li> <li><input type="checkbox"/> (4) <b>Weekly.</b> 45 Hours of Service for each week worked.</li> <li><input type="checkbox"/> (5) <b>Daily.</b> 10 Hours of Service for each day worked.</li> <li><input type="checkbox"/> (6) <b>Semi-monthly.</b> 95 Hours of Service for each semi-monthly period.</li> <li><input type="checkbox"/> (7) <b>Describe Equivalency Method:</b> _____</li> </ul> <p><i>[Note: Any description of an Equivalency Method must be definitely determinable.]</i></p>
<input type="checkbox"/>	<input type="checkbox"/>	(e) <b>Special rules:</b> _____
		<i>[Note: Any special rules under this subsection (e) must be definitely determinable.]</i>

8-6 **BREAKS IN SERVICE.** Generally, an Employee will be credited with all service earned with the Employer, including service earned prior to a Break in Service. To disregard service earned prior to a Break in Service for vesting purposes, complete this AA §8-6. (See Section 6.08 of the Plan.)

- (a) If an Employee incurs at least one Break in Service, the Plan will disregard all service earned prior to such Break in Service for purposes of determining vesting under the Plan.
- (b) If an Employee incurs at least \_\_\_\_\_ consecutive Breaks in Service, the Plan will disregard all service earned prior to such consecutive Breaks in Service for purposes of determining vesting under the Plan. [*Enter “0” if prior service will be disregarded for all rehired Employees.*]

(c) The Nonvested Participant Break in Service rule applies to all Employees, including Employees who have not terminated employment.

(d) Describe any special rules for applying the vesting Break in Service rules: \_\_\_\_\_

[*Note: Any special rules under this subsection (d) must be definitely determinable.*]

#### 8-7 ALLOCATION OF FORFEITURES.

The Employer may decide in its discretion how to treat forfeitures under the Plan. Alternatively, the Employer may designate under this AA §8-7 how forfeitures occurring during a Plan Year will be treated. (See Section 6.11 of the Plan.)

<b>ER</b>	<b>Match</b>	
-----------	--------------	--

<input type="checkbox"/>	<input type="checkbox"/>	(a) N/A. All contributions are 100% vested. [ <i>Do not complete the rest of this AA §8-7.</i> ]
--------------------------	--------------------------	--

<input type="checkbox"/>	<input type="checkbox"/>	(b) Reallocated as additional Employer Contributions or as additional Matching Contributions.
--------------------------	--------------------------	---

<input type="checkbox"/>	<input type="checkbox"/>	(c) Used to reduce Employer and/or Matching Contributions.
--------------------------	--------------------------	--

For purposes of subsection (b) or (c) above, forfeitures will be applied:

<input type="checkbox"/>	<input type="checkbox"/>	(d) for the Plan Year in which the forfeiture occurs.
--------------------------	--------------------------	---

<input type="checkbox"/>	<input type="checkbox"/>	(e) for the Plan Year following the Plan Year in which the forfeitures occur.
--------------------------	--------------------------	---

Prior to applying forfeitures under subsection (b) or (c):

<input type="checkbox"/>	<input type="checkbox"/>	(f) Forfeitures may be used to pay Plan expenses. (See Section 6.11(d) of the Plan.)
--------------------------	--------------------------	--

<input type="checkbox"/>	<input type="checkbox"/>	(g) Forfeitures may not be used to pay Plan expenses.
--------------------------	--------------------------	---

In determining the amount of forfeitures to be allocated under subsection (b) above, the same allocation conditions apply as for the source for which the forfeiture is being allocated, unless designated otherwise below.

<input type="checkbox"/>	<input type="checkbox"/>	(h) Forfeitures are not subject to any allocation conditions.
--------------------------	--------------------------	---

<input type="checkbox"/>	<input type="checkbox"/>	(i) Forfeitures are subject to a last day of employment allocation condition.
--------------------------	--------------------------	---

<input type="checkbox"/>	<input type="checkbox"/>	(j) Forfeitures are subject to a ____ Hours of Service minimum service requirement.
--------------------------	--------------------------	---

In determining the treatment of forfeitures under this AA §8-7, the following special rules apply:

<input type="checkbox"/>	<input type="checkbox"/>	(k) Describe: _____
--------------------------	--------------------------	---------------------

#### 8-8 SPECIAL RULES REGARDING CASH-OUT DISTRIBUTIONS.

(a) **Additional allocations.** If a terminated Participant receives a complete distribution of his/her vested Account Balance while still entitled to an additional allocation, the Cash-Out Distribution forfeiture provisions do not apply until the Participant receives a distribution of the additional amounts to be allocated. (See Section 6.10(a)(1) of the Plan.)

To modify the default Cash-Out Distribution forfeiture rules, complete this AA §8-8(a).

<input type="checkbox"/>	The Cash-Out Distribution forfeiture provisions will apply if a terminated Participant takes a complete distribution, regardless of any additional allocations during the Plan Year.
--------------------------	--

(b) **Timing of forfeitures.** A Participant who receives a Cash-Out Distribution (as defined in Section 6.10(a) of the Plan) is treated as having an immediate forfeiture of his/her nonvested Account Balance.

To modify the forfeiture timing rules to delay the occurrence of a forfeiture upon a Cash-Out Distribution, complete this AA §8-8(b).

<input type="checkbox"/>	A forfeiture will occur upon the completion of ____ consecutive Breaks in Service (as defined in Section 6.08 of the Plan).
--------------------------	---

- (c) **Repayment of Cash-Out Distribution.** Unless elected otherwise under this AA §8-8(c), if a Participant receives a Cash-Out Distribution that results in a forfeiture, and the Participant resumes employment covered under the Plan, such Participant may repay to the Plan the amount received as a Cash-Out Distribution.
- If a Participant receives a Cash-Out Distribution that results in a forfeiture, and the Participant resumes employment covered under the Plan, such Participant may NOT repay to the Plan the amount received as a Cash-Out Distribution and the provisions of Section 6.10(a)(2) do not apply.

8-9 **SPECIAL RULE FOR FORFEITURE UPON DEATH OF A PARTICIPANT.** Unless elected below, no vested benefits are forfeited upon the death of a Participant.

To modify this default forfeiture rule, check to box below.

- The Plan will forfeit benefits (including vested benefits) upon the death of a Participant, if not precluded by law. In no event may the Plan forfeit any amounts attributable to a Participant's Salary Deferrals or After-Tax Employee Contributions under the Plan or if the Plan has commenced distributions prior to the Participant's death.

## SECTION 9

### DISTRIBUTION PROVISIONS – TERMINATION OF EMPLOYMENT

#### 9-1 AVAILABLE FORMS OF DISTRIBUTION.

**Lump sum distribution.** A Participant may take a distribution of his/her entire vested Account Balance in a single lump sum upon termination of employment. In addition, the Plan Administrator may permit a Participant to take partial distributions or installment distributions solely to the extent necessary to satisfy the required minimum distribution rules under Section 8 of the Plan.

**Additional distribution options.** To provide for additional distribution options, check the applicable distribution forms under this AA §9-1.

- (a) **Installment distributions.** A Participant may take a distribution over a specified period not to exceed the life or life expectancy of the Participant (and a designated beneficiary).
- (b) **Partial lump sum.** A Participant may take a distribution of less than the entire vested Account Balance upon termination of employment.
- Minimum distribution amount. A Participant may not take a partial lump sum distribution of less than \$\_\_\_\_\_.
- (c) **Annuity distributions.** A Participant may elect to have the Plan Administrator use the Participant's vested Account Balance to purchase an annuity as described in Section 7.01 of the Plan.
- (d) **Describe distribution options:** \_\_\_\_\_
- [Note: Any distribution option described in this subsection (d) may not be subject to the discretion of the Employer or Plan Administrator.]*

#### 9-2 PARTICIPANT AND SPOUSAL CONSENT.

- (a) **Involuntary Cash-Out Distribution.** A Participant who terminates employment with a vested Account Balance of \$5,000 or less will receive an Involuntary Cash-Out Distribution, unless elected otherwise under this AA §9-2. If a Participant's vested Account Balance exceeds \$5,000, the Participant generally must consent to a distribution from the Plan, except to the extent provided otherwise under this AA §9-2. See Section 7.03 of the Plan for additional rules regarding the Participant consent requirements under the Plan.
- (1) **No Involuntary Cash-Out Distributions.** The Plan does not provide for Involuntary Cash-Out Distributions. A terminated Participant must consent to any distribution from the Plan. (See Section 14.02(b) of the Plan for special rules upon Plan termination.)
- (2) **Involuntary Cash-Out Distribution threshold.** A terminated Participant will receive an Involuntary Cash-Out Distribution only if the Participant's vested Account Balance is less than or equal to \$\_\_\_\_\_.
- (3) **Application of Automatic Rollover rules.** The Automatic Rollover rules described in Section 7.05 of the Plan do not apply to any Involuntary Cash-Out Distribution below \$1,000, unless elected otherwise under this subsection (3). If this subsection (3) is checked, the Automatic Rollover provisions apply to all Involuntary Cash-Out Distributions (including those below \$1,000).
- (4) **Distribution upon attainment of stated age.** Participant consent will not be required with respect to distributions made upon attainment of Normal Retirement Age (or age 62, if later), regardless of the value of the Participant's vested Account Balance.

- (5) **Treatment of Rollover Contributions.** Unless elected otherwise under this subsection (5), Rollover Contributions will be excluded in determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold for purposes of applying the distribution rules under this AA §9 and the Automatic Rollover provisions under Section 7.05 of the Plan. To include Rollover Contributions in determining whether a Participant's vested Account Balance exceeds the Involuntary Cash-Out threshold, check this subsection (5).
- (b) **Spousal consent.** Spousal consent is not required for a Participant to receive a distribution or name an alternate beneficiary, unless designated otherwise under this subsection (b). See Section 9.02 of the Plan for rules regarding Spousal consent under the Plan.
- (1) **Distribution consent.** A Participant's Spouse must consent to any distribution or loan, provided the Participant's vested Account Balance exceeds \$\_\_\_\_\_.
- (2) **Beneficiary consent.** A Participant's Spouse must consent to naming someone other than the Spouse as beneficiary under the Plan.
- (c) **Describe** any special rules affecting Participant or Spousal consent: \_\_\_\_\_  
[*Note: Any special rules under this subsection (c) must be definitely determinable.*]

### 9-3 TIMING OF DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT.

- (a) **Distribution of vested Account Balances exceeding \$5,000.** A Participant who terminates employment with a vested Account Balance exceeding \$5,000 may receive a distribution of his/her vested Account Balance in any form permitted under AA §9-1 within a reasonable period following:
- (1) the date the Participant terminates employment.
- (2) the last day of the Plan Year during which the Participant terminates employment.
- (3) the first Valuation Date following the Participant's termination of employment.
- (4) the end of the calendar quarter following the date the Participant terminates employment.
- (5) attainment of Normal Retirement Age, death or becoming Disabled.
- (6) Describe: \_\_\_\_\_  
[*Note: Any special rules under this subsection (6) must be definitely determinable.*]
- (b) **Distribution of vested Account Balances not exceeding \$5,000.** A Participant who terminates employment with a vested Account Balance that does not exceed \$5,000 will receive a **lump sum** distribution of his/her vested Account Balance within a reasonable period following:
- (1) the date the Participant terminates employment.
- (2) the last day of the Plan Year during which the Participant terminates employment.
- (3) the first Valuation Date following the Participant's termination of employment.
- (4) the end of the calendar quarter following the date the Participant terminates employment.
- (5) Describe: \_\_\_\_\_  
[*Note: Any special rules under this subsection (5) must be definitely determinable.*]
- (c) **Alternate Cash-Out distribution threshold.** Instead of a vested Account Balance Cash-Out threshold of \$5,000, for purposes of applying the Cash-Out distribution provisions under this AA §9-3, the threshold for distributions upon termination of employment will be based on a vested Account Balance of \$\_\_\_\_\_.
- (d) **Describe additional distribution options:** \_\_\_\_\_  
[*Note: Any additional distribution option described in this subsection (d) may not be subject to the discretion of the Employer or Plan Administrator.*]

### 9-4 DISTRIBUTION UPON DISABILITY.

Unless designated otherwise under this AA §9-4, a Participant who terminates employment on account of becoming Disabled may receive a distribution of his/her vested Account Balance in the same manner as a regular distribution upon termination.

- (a) **Immediate distribution upon termination of employment.** Distribution will be made as soon as reasonable following the date the Participant terminates employment on account of becoming Disabled.
- (b) **Following year distribution upon termination of employment.** Distribution will be made as soon as reasonable following the last day of the Plan Year during which the Participant terminates employment on account of becoming Disabled.

(c) Describe: \_\_\_\_\_

*[Note: Any distribution event described in this subsection (c) will apply uniformly to all Participants under the Plan and may not be subject to the discretion of the Employer or Plan Administrator.]*

9-5 DETERMINATION OF BENEFICIARY.

(a) **Default beneficiaries.** Under Section 7.07(c) of the Plan, to the extent a Beneficiary has not been named by the Participant (subject to the spousal consent rules) and is not designated under the terms of the Investment Arrangement(s) to receive all or any portion of the deceased Participant’s death benefit, such amount shall be distributed to the Participant’s surviving Spouse (if the Participant was married at the time of death) who shall be considered the designated Beneficiary. If the Participant does not have a surviving Spouse at the time of death, distribution will be made to the Participant’s surviving children (including legally adopted children, but not including step-children), as designated Beneficiaries, in equal shares. If the Participant has no surviving children, distribution will be made to the Participant’s estate.

If this subsection (a) is checked, the default beneficiaries under Section 7.07(c) of the Plan are modified as follows:

(1) The Plan adopts the default beneficiary rules under Section 7.07(c) of the Plan, except, if the Participant does not have a surviving Spouse at the time of death, distribution will be made to the Participant’s children (including legally adopted children, but not including step-children), as designated Beneficiaries, **per stirpes**.

(2) Describe other modifications to the default beneficiaries under Section 7.07(c) of the Plan: \_\_\_\_\_

*[Note: The description of the modifications to the default beneficiaries must be sufficiently clear for the Plan Administrator to determine the beneficiaries and the method of distribution of the Participant’s death benefit.]*

(b) **One-year marriage rule.** For purposes of determining whether an individual is considered the surviving Spouse of the Participant, the determination is based on the marital status as of the date of the Participant’s death, unless designated otherwise under this subsection (b).

If this subsection (b) is checked, in order to be considered the surviving Spouse, the Participant and surviving Spouse must have been married for the entire one-year period ending on the date of the Participant’s death. If the Participant and surviving Spouse are not married for at least one year as of the date of the Participant’s death, the Spouse will not be treated as the surviving Spouse for purposes of applying the distribution provisions of the Plan. (See Section 9.03 of the Plan.)

(c) **Divorce of Spouse.** Unless elected otherwise under this subsection (c), if a Participant designates his/her Spouse as Beneficiary and subsequent to such Beneficiary designation, the Participant and Spouse are divorced, the designation of the Spouse as Beneficiary under the Plan is automatically rescinded as set forth under Section 7.07(c)(6) of the Plan.

If this subsection (c) is checked, a Beneficiary designation will not be rescinded upon divorce of the Participant and Spouse.

*[Note: Section 7.07(c)(6) of the Plan and this subsection (c) will be subject to the provisions of a Beneficiary designation entered into by the Participant. Thus, if a Beneficiary designation specifically overrides the election under this subsection (c), the provisions of the Beneficiary designation will control. See Section 7.07(c)(6) of the Plan.]*

**SECTION 10  
IN-SERVICE DISTRIBUTIONS AND REQUIRED MINIMUM DISTRIBUTIONS**

10-1 **AVAILABILITY OF IN-SERVICE DISTRIBUTIONS.** A Participant may withdraw all or any portion of his/her vested Account Balance, to the extent designated, upon the occurrence of any of the event(s) selected under this AA §10-1. If more than one option is selected for a particular contribution source under this AA §10-1, a Participant may take an in-service distribution upon the occurrence of any of the selected events, unless designated otherwise under this AA §10-1.

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(a) No in-service distributions are permitted.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(b) Attainment of age 59½.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(c) Attainment of age _____. (Not greater than age 70 1/2)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(d) A Hardship that satisfies the safe harbor rules under Section 7.10(e)(1) of the Plan.

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(e) A non-safe harbor Hardship described in Section 7.10(e)(2) of the Plan.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(f) Attainment of Normal Retirement Age.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) Attainment of Early Retirement Age.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(h) The Participant has participated in the Plan for at least ____ (cannot be less than 60) months.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(i) The amounts being withdrawn have been held in the Trust for at least two years.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(j) Upon a Participant becoming Disabled (as defined in AA §9-4(b)).
<input type="checkbox"/>	N/A	N/A	(k) As a Qualified Reservist Distribution.
<input type="checkbox"/>	N/A	N/A	(l) Upon a deemed separation of employment when an individual is on active duty for a period of at least 30 days while performing service in the Uniformed Services.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(m) Describe: _____

*[Note: No in-service distribution of Salary Deferrals is permitted prior to age 59½, except for Hardship, or Disability. If Normal Retirement Age or Early Retirement Age is earlier than age 59½, such age is deemed to be age 59½ for purposes of determining eligibility to distribute Salary Deferrals (if subsection (f) or (g) above is checked under the Deferral column). If this Plan has accepted a transfer of assets from a pension plan (e.g., a money purchase plan), no in-service distribution from amounts attributable to such transferred assets is permitted prior to age 62, except for Disability.]*

10-2 **APPLICATION TO OTHER CONTRIBUTION SOURCES.** If the Plan allows for Rollover Contributions under AA §C-2 or After-Tax Employee Contributions under AA §6-7, unless elected otherwise under this AA §10-2, a Participant may take an in-service distribution from his/her Rollover Account and After-Tax Employee Contribution Account at any time. Employer Pick-Up Contributions will not be eligible for in-service distribution.

Alternatively, if this AA §10-2 is completed, the following in-service distribution provisions apply for Rollover Contributions, After-Tax Employee Contributions and/or Employer Pick-Up Contributions:

Rollover	After-Tax	Pick-Up	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(a) No in-service distributions are permitted.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(b) Attainment of age 59½.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(c) Attainment of age ____ (Not greater than age 70 1/2)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(d) A Hardship (that satisfies the safe harbor rules under Section 7.10(e)(1) of the Plan).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(e) A non-safe harbor Hardship described in Section 7.10(e)(2) of the Plan.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(f) Attainment of Normal Retirement Age.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) Attainment of Early Retirement Age.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(h) Upon a Participant becoming Disabled (as defined in AA §9-4(b)).
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(i) Describe: _____

10-3 **SPECIAL DISTRIBUTION RULES.** No special distribution rules apply, unless specifically provided under this AA §10-3.

- (a) In-service distributions will only be permitted if the Participant is 100% vested in the source from which the withdrawal is taken.
- (b) A Participant may take no more than \_\_\_\_ in-service distribution(s) in a Plan Year.
- (c) A Participant may not take an in-service distribution of less than \$\_\_\_\_.
- (d) A Participant may not take an in-service distribution of more than \$\_\_\_\_.
- (e) Unless elected otherwise under this subsection (e), the hardship distribution provisions of the Plan are not expanded to cover primary beneficiaries as set forth in Section 7.10(e)(5) of the Plan. If this subsection (e) is checked, the hardship provisions of the Plan will apply with respect to individuals named as primary beneficiaries under the Plan.

- (f) In determining whether a Participant has an immediate and heavy financial need for purposes of applying the non-safe harbor Hardship provisions under Section 7.10(e)(2) of the Plan, the following modifications are made to the permissible events listed under Section 7.10(e)(1) of the Plan: \_\_\_\_\_  
[*Note: This subsection (f) may only be used to the extent a non-safe harbor Hardship distribution is authorized under AA §10-1 or AA §10-2.*]
- (g) If the Plan includes Accounts that hold inactive sources of contributions, the Employer may designate under this AA §10-3(g) the in-service distribution options available to such Accounts: \_\_\_\_\_
- (h) Other distribution rules: \_\_\_\_\_

10-4 **REQUIRED MINIMUM DISTRIBUTIONS.**

- (a) **Required distributions after death.** If a Participant dies before distributions begin and there is a Designated Beneficiary, the Participant or Beneficiary may elect on an individual basis whether the 5-year rule (as described in Section 8.06(a) of the Plan) or the life expectancy method described under Sections 8.02 of the Plan applies. See Section 8.06(b) of the Plan for rules regarding the timing of an election authorized under this AA §10-4.  
  
Alternatively, if selected under this subsection (a), any death distributions to a Designated Beneficiary will be made only under either the 5-year rule or the life expectancy method, as elected below:
  - (1) The five-year rule under Section 8.06(a) of the Plan applies (instead of the life expectancy method). Thus, the entire death benefit must be distributed by the end of the fifth year following the year of the Participant’s death. Death distributions to a Designated Beneficiary may not be made under the life expectancy method.
  - (2) The life expectancy method under Sections 8.02 and 8.04 of the Plan (and not the 5-year rule).
- (b) **Describe any special rules applicable to required minimum distributions:** \_\_\_\_\_  
[*Note: Any special rule under this subsection (b) must satisfy the requirements of Code §401(a)(9). This subsection (b) may be used to override the default provision under Section 8.06(b) of the Plan. For example, the Employer may designate the life expectancy rules as the default rather than the five-year rule when a Participant or Beneficiary fails to make an election.*]

**SECTION 11  
MISCELLANEOUS PROVISIONS**

11-1 **PLAN VALUATION.** The Plan is valued **annually**, as of the last day of the Plan Year.

- (a) **Additional valuation dates.** In addition, the Plan will be valued on the following dates:
 

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(1) <b>Daily.</b> The Plan is valued at the end of each business day during which the New York Stock Exchange is open.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(2) <b>Monthly.</b> The Plan is valued at the end of each month of the Plan Year.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(3) <b>Quarterly.</b> The Plan is valued at the end of each Plan Year quarter.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(4) <b>Describe:</b> _____

[*Note: The Employer may elect operationally to perform interim valuations, regardless of any selection in this subsection (a).*]
- (b) **Special rules.** The following special rules apply in determining the amount of income or loss allocated to Participants’ Accounts: \_\_\_\_\_

11-2 **SPECIAL RULES FOR APPLYING THE CODE §415 LIMITATION.** The provisions under Section 5.02 of the Plan apply for purposes of determining the Code §415 Limitation.

- Complete this AA §11-2 to override the default provisions that apply in determining the Code §415 Limitation under Section 5.02 of the Plan.
- (a) **Limitation Year.** Instead of the Plan Year, the Limitation Year is the 12-month period ending \_\_\_\_\_.  
[*Note: If the Plan has a short Plan Year for the first year of establishment, the Limitation Year is deemed to be the 12-month period ending on the last day of the short Plan Year.*]

(b) **Imputed compensation.** For purposes of applying the Code §415 Limitation, Total Compensation includes imputed compensation for a Participant who terminates employment on account of becoming disabled. (See Section 5.02(c)(7)(ii) of the Plan.)

(c) **Special rules:** \_\_\_\_\_  
[*Note: Any special rules under this subsection (c) must be consistent with the requirements of Code §415.*]

11-3 **MILITARY SERVICE PROVISIONS -- BENEFIT ACCRUALS.** The benefit accrual provisions under Section 15.04 of the Plan do not apply. To apply the benefit accrual provisions under Section 15.04 of the Plan, check the box below.

(a) **Eligibility for Plan benefits.** Check this box if the Plan will provide the benefits described in Section 15.04 of the Plan. If this box is checked, an individual who dies or becomes disabled in qualified military service will be treated as reemployed for purposes of determining entitlement to benefits under the Plan.

(b) **Deemed separation from service.** Unless otherwise elected under AA§10-1(I), an individual shall not be treated as having been severed from employment during any period the individual is performing service in the Uniformed Services for purposes of receiving a Plan distribution under Code §401(k)(2)(B)(i)(I).

11-4 **ELECTION NOT TO PARTICIPATE (see Section 2.08 of the Plan).** All Participants share in any allocation under this Plan and no Employee may waive out of Plan participation.

To allow Employees to make a one-time irrevocable waiver, check below.

An Employee may make a one-time irrevocable election not to participate under the Plan.

11-5 **TREATMENT OF CERTAIN BENEFITS.** The protected benefits rules under Code §411(d)(6) do not apply to the Plan. However, the Employer may describe below (or in a separate addendum attached to this Adoption Agreement) the treatment of certain benefits following events such as plan merger or consolidation, transfer of assets or similar events.

Describe treatment of benefits: \_\_\_\_\_

[*Note: If the benefit described here in the Plan or a plan being merged into the Plan is not either (i) available as a provision through the Pre-Approved Plan or (ii) the subject of a prior determination, advisory, or opinion letter, the Employer cannot rely on the Pre-Approved Plan Provider's opinion letter for qualification with respect to such benefit. If the benefit described here in the Plan or a plan being merged into the Plan is not permitted in a pre-approved plan, as described in Section 6.03 of Revenue Procedure 2017-41, such provision must be discontinued no later than the date the Employer adopts this Pre-Approved Plan or, in the case of a merger, the merger date.*]

11-6 **SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS.** If the Plan is a Multiple Employer Plan (as designated under AA §2-6), the rules applicable to Multiple Employer Plans under Section 16.07 of the Plan apply.

The following special rules apply with respect to Multiple Employer Plans: \_\_\_\_\_

[*Note: Any special rules under this AA §11-6 must satisfy the nondiscrimination requirements under Code §401(a)(4) and must satisfy the rules applicable to Multiple Employer Plans under Code §413(c).*]

APPENDIX A  
SPECIAL EFFECTIVE DATES

[*Note: This Appendix A may be used to memorialize prior Plan provisions that pertain to sources that no longer accept new contributions under the Plan.*]

- A-1 **Eligible Employees.** The definition of Eligible Employee under AA §3 is effective as follows:  
\_\_\_\_\_
- A-2 **Minimum age and service conditions.** The minimum age and service conditions and Entry Date provisions specified in AA §4 are effective as follows:  
\_\_\_\_\_
- A-3 **Compensation definitions.** The compensation definitions under AA §5 are effective as follows:  
\_\_\_\_\_
- A-4 **Employer Contributions.** The Employer Contribution provisions under the Plan are effective as follows:  
\_\_\_\_\_
- A-5 **After-Tax Employee and Pick-Up Contributions.** The provisions of the Plan addressing Employee After-Tax Contributions and Pick-Up Contribution provisions under the Plan are effective as follows:  
\_\_\_\_\_
- A-6 **Salary Deferrals.** The Salary Deferral provisions under AA §6A are effective as follows:  
\_\_\_\_\_
- A-7 **Matching Contributions.** The Matching Contribution provisions under AA §6B are effective as follows:  
\_\_\_\_\_
- A-8 **Retirement ages.** The retirement age provisions under AA §7 are effective as follows:  
\_\_\_\_\_
- A-9 **Vesting and forfeiture rules.** The rules regarding vesting and forfeitures under AA §8 are effective as follows:  
\_\_\_\_\_
- A-10 **Distribution provisions.** The distribution provisions under AA §9 are effective as follows:  
\_\_\_\_\_
- A-11 **In-service distributions and Required Minimum Distributions.** The provisions regarding in-service distribution and Required Minimum Distributions under AA §10 are effective as follows:  
\_\_\_\_\_
- A-12 **Miscellaneous provisions.** The provisions under AA §11 are effective as follows:  
\_\_\_\_\_
- A-13 **Special effective date provisions for merged plans.** If any qualified retirement plans have been merged into this Plan, the provisions of Section 14.03 of the Plan apply, as follows:  
\_\_\_\_\_
- A-14 **Other special effective dates:**  
\_\_\_\_\_
- A-15 **Special effective dates for restated pre-approved plans:** Use this A-15 to memorialize plan operational changes that have occurred after the general effective date of the plan and the actual plan restatement adoption date. Adopting employers may use the above Special Effective Date options (A-1 through A-14) to memorialize these changes or they may use this A-15.  
\_\_\_\_\_

**APPENDIX B**  
**LOAN POLICY**

Use this Appendix B to identify elections dealing with the administration of Participant loans. These elections may be changed without amending this Adoption Agreement by substituting an updated Appendix B with new elections. Any modifications to this Appendix B, or any modifications to a separate loan policy describing the loan provisions selected under the Plan, will not affect an Employer's reliance on the IRS Favorable Letter. Loans are subject to any internal limitations or rules imposed by the Investment Arrangement or the service provider or platform.

B-1 Are **PARTICIPANT LOANS** permitted? (See Section 13 of the Plan.)

- (a) Yes  
 (b) No

B-2 **LOAN PROCEDURES.**

- (a) Loans will be provided under the default loan procedures set forth in Section 13 of the Plan, unless modified under this Appendix B.  
 (b) Loans will be provided under a separate written loan policy. [*Note: If this subsection (b) is checked, do not complete the rest of this Appendix B.*]

B-3 **AVAILABILITY OF LOANS.** Participant loans are available to all active Participants and Beneficiaries. Participant loans are not available to a former Employee or Beneficiary (including an Alternate Payee under a QDRO). To override this default provision, complete this AA §B-3:

- (a) A former Employee or Beneficiary (including an Alternate Payee) who has a vested Account Balance may request a loan from the Plan.  
 (b) A "limited participant" as defined in Section 3.05 of the Plan may not request a loan from the Plan.  
 (c) An officer or director of the Employer, as defined for purposes of the Sarbanes-Oxley Act, may **not** request a loan from the Plan.  
 (d) Describe limitations on receiving loans under the Plan: \_\_\_\_\_  
[*Note: Any limitation under subsection (d) must be definitely determinable and not provide any Employer discretion.*]

B-4 **LOAN LIMITS.** The default loan policy under Section 13.03 of the Plan allows Participants to take a loan provided all outstanding loans do not exceed 50% of the Participant's vested Account Balance. To override the default loan policy to allow loans up to \$10,000, even if greater than 50% of the Participant's vested Account Balance, check this AA §B-4.

- A Participant may take a loan equal to the greater of \$10,000 or 50% of the Participant's vested Account Balance.  
[*Note: If this AA §B-4 is checked, the Participant may be required to provide adequate security as required under Section 13.06 of the Plan.*]

B-5 **NUMBER OF LOANS.** The default loan policy under Section 13.04 of the Plan restricts Participants to one loan outstanding at any time. To override the default loan policy and permit Participants to have more than one loan outstanding at any time, complete subsection (a) or (b) below.

- (a) A Participant may have \_\_\_ loans outstanding at any time.  
 (b) There are no restrictions on the number of loans a Participant may have outstanding at any time.

B-6 **LOAN AMOUNT.** The default loan policy under Section 13.04 of the Plan provides that a Participant may not receive a loan of less than \$1,000. To modify the minimum loan amount or to add a maximum loan amount, complete this AA §B-6.

- (a) There is no minimum loan amount.  
 (b) The minimum loan amount is \$\_\_\_\_\_.  
 (c) The maximum loan amount is \$\_\_\_\_\_.

B-7 **INTEREST RATE.** The default loan policy under Section 13.05 of the Plan provides for an interest rate commensurate with the interest rates charged by local commercial banks for similar loans. To override the default loan policy and provide a specific interest rate to be charged on Participant loans, complete this AA §B-7.

- (a) The prime interest rate plus \_\_\_ percentage point(s).  
 (b) The interest rate is determined in accordance with the terms of the Investment Arrangement, service provider procedures, or other loan policy document adopted by the Plan Administrator.  
 (c) Describe: \_\_\_\_\_

[*Note: Any interest rate described in this AA §B-7 must be reasonable and must apply uniformly to all Participants.*]

- B-8 **PURPOSE OF LOAN.** The default loan policy under Section 13.02 of the Plan provides that a Participant may receive a Participant loan for any purpose. To modify the default loan policy to restrict the availability of Participant loans to hardship events, check this AA §B-8.
- (a) A Participant may only receive a Participant loan upon the demonstration of a hardship event, as described in Section 7.10(e)(1)(i) of the Plan.
- (b) A Participant may only receive a Participant loan under the following circumstances: \_\_\_\_\_
- B-9 **APPLICATION OF LOAN LIMITS.** If Participant loans are not available from all contribution sources, the limitations under Code §72(p) and the adequate security requirements of the Department of Labor regulations will be applied by taking into account the Participant’s entire Account Balance. To override this provision, complete this AA §B-9.
- The loan limits and adequate security requirements will be applied by taking into account only those contribution Accounts which are available for Participant loans.
- B-10 **CURE PERIOD.** The Plan provides that a Participant incurs a loan default if a Participant does not repay a missed payment by the end of the calendar quarter following the calendar quarter in which the missed payment was due. To override this default provision to apply a shorter cure period, complete this AA §B-10.
- The cure period for determining when a Participant loan is treated as in default will be \_\_\_\_\_ days (cannot exceed 90) following the end of the month in which the loan payment is missed.
- (b) The cure period for determining when a Participant loan is treated as in default will be the greater of \_\_\_\_\_ days (cannot exceed 90) following the end of the month in which the loan payment is missed or the last day of the second calendar quarter following the calendar quarter in which the missed payment was due.
- (c) The cure period for determining when a loan is treated as in default will be \_\_\_\_\_ days (cannot exceed 90) following the first missed loan payment.
- B-11 **PERIODIC REPAYMENT – PRINCIPAL RESIDENCE.** If a Participant loan is for the purchase of a Participant’s primary residence, the loan repayment period for the purchase of a principal residence may not exceed ten (10) years. To override this default provision, complete this AA §B-11.
- (a) The Plan does not permit loan payments to exceed five (5) years, even for the purchase of a principal residence.
- (b) The loan repayment period for the purchase of a principal residence may not exceed \_\_\_\_\_ years (may not exceed 30).
- (c) Loans for the purchase of a Participant’s primary residence may be payable over any reasonable period commensurate with the period permitted by commercial lenders for similar loans.
- B-12 **TERMINATION OF EMPLOYMENT.** Section 13.10(a) of the Plan provides that a Participant loan becomes due and payable in full upon the Participant’s termination of employment. To override this default provision, complete this AA §B-12.
- A Participant loan will not become due and payable in full upon the Participant’s termination of employment.
- B-13 **DIRECT ROLLOVER OF A LOAN NOTE.** Section 13.10(b) of the Plan provides that upon termination of employment a Participant may request the Direct Rollover of a loan note. To override this default provision, complete this AA §B-13.
- A Participant may **not** request the Direct Rollover of the loan note upon termination of employment.
- B-14 **LOAN RENEGOTIATION.** The default loan policy provides that a Participant may renegotiate a loan, provided the renegotiated loan separately satisfies the reasonable interest rate requirement, the adequate security requirement, the periodic repayment requirement and the loan limitations under the Plan. The Employer may restrict the availability of renegotiations to prescribed purposes provided the ability to renegotiate a Participant loan is available on a non-discriminatory basis. To override the default loan policy and restrict the ability of a Participant to renegotiate a loan, complete this AA §B-14.
- (a) A Participant may **not** renegotiate the terms of a loan.
- (b) The following special provisions apply with respect to renegotiated loans: \_\_\_\_\_
- B-15 **SOURCE OF LOAN.** Participant loans may be made from all available contribution sources, to the extent vested, unless designated otherwise under this AA §B-15.
- Participant loans will not be available from the following contribution sources: \_\_\_\_\_
- Participant loans will only be available from the following contribution sources: \_\_\_\_\_
- B-16 **SPOUSAL CONSENT.** Spousal consent is not required for a Participant to receive a loan, unless required by State law. To override this provision, complete this AA §B-16.
- Spousal consent is required to receive a Participant loan.

B-17 **MODIFICATIONS TO DEFAULT LOAN PROVISIONS.**

The following special rules will apply with respect to Participant loans under the Plan: \_\_\_\_\_

*[Note: Any provision under this AA §B-17 must satisfy the requirements under Code §72(p) and the regulations thereunder and will control over any inconsistent provisions of the Plan dealing with the administration of Participant loans.]*

APPENDIX C  
ADMINISTRATIVE ELECTIONS

Use this Appendix C to identify certain elections dealing with the administration of the Plan. These elections may be changed without amending this Adoption Agreement by substituting an updated Appendix C with new elections. The provisions selected under this Appendix C do not create qualification issues and any changes to the provisions under this Appendix C will not affect the Employer's reliance on the IRS Favorable Letter.

C-1 **DIRECTION OF INVESTMENTS.** Are Participants permitted to **direct investments**? (See Section 10.07 of the Plan.)

(a) No

(b) Yes, but subject to the following restrictions:

(1) No restrictions apply

(2) Only for Accounts that are 100% vested

(3) Specify Accounts: \_\_\_\_\_

(4) Describe any special rules that apply for purposes of direction of investments: \_\_\_\_\_

[*Note: This subsection (4) may be used to describe special investment provisions for specific types of investments.*]

C-2 **ROLLOVER CONTRIBUTIONS.** Does the Plan accept **Rollover Contributions**? (See Section 3.05 of the Plan.)

(a) No

(b) Yes

(1) If this subsection (1) is checked, an Employee may make a Rollover Contribution to the Plan prior to becoming a Participant in the Plan.

(2) Check this subsection (2) if the Plan will accept Rollover Contributions from former Employees with an Account Balance under the Plan.

(3) Describe any special rules for accepting Rollover Contributions: \_\_\_\_\_

[*Note: The Employer may designate in this subsection (3), or in separate written procedures, the extent to which it will accept rollovers from designated plan types. For example, the Employer may decide not to accept rollovers from certain designated plans (e.g., 403(b) plans, §457 plans or IRAs). Any special rollover procedures will apply uniformly to all Participants under the Plan.*]

C-3 **LIFE INSURANCE.** Are **life insurance** investments permitted? (See Section 10.08 of the Plan.)

(a) No

(b) Yes

C-4 **QDRO PROCEDURES.** Although the requirements of Code §414(p) do not apply to the Plan, the Employer may elect to apply the procedures set forth under Section 11.05 of the Plan (which are patterned after the rules under Code §414(p)) by electing subsection (a) below or may elect not to apply the procedures set forth under Section 11.05 of the Plan and instead, describe the Plan's procedures for addressing domestic relations orders below or in separate administrative procedures.

(a) The Employer elects to have the requirements of Section 11.05 of the Plan apply to its Plan.

(b) The requirements of Section 11.05 of the Plan do not apply to the Plan. The procedures for addressing the receipt of domestic relations orders are either set forth below or in separate administrative procedures.

Describe domestic relations procedures: \_\_\_\_\_

**EMPLOYER SIGNATURE PAGE**

**PURPOSE OF EXECUTION.** This Signature Page is being executed for Florida Polytechnic University Retirement Plan to effect:

- (a) The adoption of a **new plan**, effective \_\_\_ [insert Effective Date of Plan]. [**Note:** Date can be no earlier than the first day of the Plan Year in which the Plan is adopted.]
- (b) The **restatement** of an existing plan in order to comply with the requirements for Cycle 3 Pre-Approved Plans, pursuant to Rev. Proc. 2017-41.
- (1) Effective date of restatement: 7-1-2021. [**Note:** Date can be no earlier than the first day of the Plan Year in which the restatement is adopted.]
- (2) Name of plan(s) being restated: Florida Polytechnic University Retirement Plan
- (3) The original effective date of the plan(s) being restated: 7-1-2017
- (c) An **amendment or restatement** of the Plan (other than to comply with the requirements for Cycle 3 Pre-Approved Plans under Rev. Proc. 2017-41). If this Plan is being amended, a snap-on amendment may be used to designate the modifications to the Plan or the updated pages of the Adoption Agreement may be substituted for the original pages in the Adoption Agreement. All prior Employer Signature Pages should be retained as part of this Adoption Agreement.
- (1) Effective Date(s) of amendment/restatement: \_\_\_\_\_
- (2) Name of plan being amended/restated: \_\_\_\_\_
- (3) The original effective date of the plan being amended/restated: \_\_\_\_\_
- (4) If Plan is being amended, identify the Adoption Agreement section(s) being amended: \_\_\_\_\_

**PRE-APPROVED PLAN PROVIDER INFORMATION.** The Pre-Approved Plan Provider (or authorized representative) will inform the Employer of any amendments made to the Plan and will notify the Employer if it discontinues or abandons the Plan. To be eligible to receive such notification, the Employer agrees to notify the Pre-Approved Plan Provider (or authorized representative) of any change in address. The Employer may direct inquiries regarding the Plan or the effect of the IRS Opinion Letter to the Pre-Approved Plan Provider (or authorized representative) at the following location:

**Name of Pre-Approved Plan Provider (or authorized representative):** Hill Ward & Henderson, Professional Association

**Address:** Post Office Box 2231 Tampa, FL 33601-2231

**Telephone number:** 813-222-8703

**IMPORTANT INFORMATION ABOUT THIS PRE-APPROVED PLAN.** A failure to properly complete the elections in this Adoption Agreement or to operate the Plan in accordance with applicable law may result in disqualification of the Plan. The Employer may rely on the Favorable IRS Letter issued by the Internal Revenue Service to the Pre-Approved Plan Provider as evidence that the Plan is qualified under Code §401(a), to the extent provided in Rev. Proc. 2017-41. The Employer may not rely on the Favorable IRS Letter in certain circumstances or with respect to certain qualification requirements, which are specified in the Favorable IRS Letter issued with respect to the Plan and in Rev. Proc. 2017-41. In order to obtain reliance in such circumstances or with respect to such qualification requirements, the Employer may need to apply to the Internal Revenue Service for a determination letter.

By executing this Adoption Agreement, the Employer intends to adopt the provisions as set forth in this Adoption Agreement and the related Plan document. By signing this Adoption Agreement, the individual below represents that he/she has the authority to execute this Plan document on behalf of the Employer. This Adoption Agreement may only be used in conjunction with Basic Plan Document #03. The Employer understands that the Pre-Approved Plan Provider has no responsibility or liability regarding the suitability of the Plan for the Employer's needs, or the options elected under this Adoption Agreement. It is recommended that the Employer consult with legal counsel before executing this Adoption Agreement.

Florida Polytechnic University  
(Name of Employer)

\_\_\_\_\_  
(Name of authorized representative)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**TRUST DECLARATION**

**This Trust Declaration may be used to identify and adopt the Trust associated with the Plan.**

*[Note: The Internal Revenue Service does not review the Trust Declaration, or the trust provisions associated with Pre-Approved Plans. Therefore, the provisions of the Trust Declaration, ASC Trust Agreement or any separate Trust agreement have not been approved by the IRS and the IRS opinion letter does not cover such Trust Agreement. The Provider, the Trustee and the adopting Employer should review the applicable Trust provisions, and any modifications thereto, with legal counsel to ensure the provisions are appropriate for the Plan and consistent with Employer elections.]*

**Name of Plan.** Florida Polytechnic University Retirement Plan

**Name of Employer.** Florida Polytechnic University

**Effective date of Trust Agreement:** 7-1-2021

(a) **The Trust terms are:**

(1) **Determined under the Trust provisions contained in the ASC Trust Agreement - Standard.**

*[Note: Trustee must complete the Trustee Signature section under Section (b) below.]*

(i) **Directed Trustee.** The Trustee may only invest Plan assets as directed by the Plan Administrator, the Employer, an Investment Manager or other Named Fiduciary or, to the extent authorized under the Plan, a Plan Participant.

(ii) **Discretionary Trustee.** The Trustee has discretion to invest Plan assets, unless specifically directed otherwise by the Plan Administrator, the Employer, an Investment Manager or other Named Fiduciary or, to the extent authorized under the Plan, a Plan Participant.

**[Modification of ASC Trust Agreement Provisions.** The Employer may amend the Trust provisions as provided under Section 1.18 of the ASC Trust Agreement. Plan provisions will override any conflicting provisions in the Trust Agreement, including any modification thereto. The Provider and the adopting Employer should review any modifications of the ASC Trust Agreement with legal counsel to ensure the provisions are appropriate for the Plan and consistent with Employer elections.]

(2) **Determined under a separate Trust agreement(s).** The Trust provisions are contained in a separate Trust Agreement that has been furnished to the Employer. Notwithstanding the terms of the Plan, the terms of the Trust Agreement shall control the rights and responsibilities of the Trustee with respect to the Trust and the assets held in such Trust.

**Name of Trustee.** TIAA, FSB

**Title of Trust Agreement.** Trust Agreement

**Address of Trustee.** 211 N. Broadway, Suite 1000, St. Louis, MO, 63102

*[Note: In using a separate Trust Agreement, the Trustee may adopt such Trust Agreement by either completing the Trustee Signature section under Section (b) below or may execute the separate Trust Agreement. In either case, the information above – Name of Trustee, Title of Trust Agreement and Address of Trustee – must be completed.]*

(3) **Plan is funded with custodial accounts, annuity contracts and/or insurance contracts.** There is no Trust associated with the Plan because the Plan is funded exclusively with custodial accounts, annuity contracts and/or insurance contracts.

*[Note: No signature is required under this Trust Declaration if the Plan is funded exclusively with custodial accounts, annuity contracts and/or insurance contracts. The Employer or Plan Administrator may enter into a separate agreement with the custodian or insurance company. Such separate agreement must be consistent with the terms of the Plan.]*

**AGENDA ITEM: VIII.**

**Florida Polytechnic University  
Governance Committee  
Board of Trustees  
May 24, 2022**

**Subject: Florida Polytechnic University Board of Trustees Debt Management Policy**

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**Proposed Action**

Recommend to the Board of Trustees the approval of the Florida Polytechnic University Board of Trustees Debt Management Policy.

**Background Information**

Board of Governors Debt Management Guidelines (for Capital Outlay Projects) ("Guidelines") was revised on March 23, 2021. The Guidelines provide guiding principles for the issuance of debt by the state universities and their DSOs. Each university is required to adopt a debt management policy which is consistent with the BOG's guidelines and is approved by the Board of Governors.

The proposed policy was developed by a workgroup consisting of the Housing Consultants, Brailsford & Dunlavey; outside legal counsel, Ken Artin; financial advisor, Dunlap & Associates; and University staff.

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**Supporting Documentation:**

1. Draft Florida Polytechnic University Board of Trustees Debt Management Policy
2. SUS BOG Debt Management Guidelines (for Capital Outlay Projects)

**Prepared by:** Dr. Allen Bottorff, VP and Chief Financial Officer

# Florida Polytechnic University Board of Trustees Debt Management Policy

## **A. INTRODUCTION (Purpose and Intent)**

### Mission of the University

Florida Polytechnic University's mission is to serve students and industry through excellence in education, discovery, and application of engineering and applied sciences.

### Purpose of the Policy

To fulfill its mission, the University will need to make strategic capital investments in its facilities that could affect the University's credit. Funding sources, including State funds (appropriations and debt), University debt, internal reserves and philanthropy will be utilized by management to achieve the University's strategic objectives. Debt, particularly tax-exempt debt, provides a low cost source of capital to fund investments and is viewed as a long-term component of liabilities.

The purpose of this document is to establish a policy for the University to use to evaluate the appropriate mix of funding sources, the capital funding structure, and the appropriate use of leverage (the "Policy").

## **B. STATEMENT OF POLICY**

It is the policy of Florida Polytechnic University that debt financing conform to the authority granted by Florida and Federal laws and regulations, its Board of Trustees, and the Board of Governors' Debt Management Guidelines for Capital Outlay Projects revised March 23, 2021, and any subsequent revisions, and that the management of debt be conducted in such a manner as to promote the interests of the University.

This Policy will be implemented, reviewed, and monitored by the University Chief Financial Officer ("CFO"), the University Controller ("Controller"), and the designated financial officer of the appropriate DSO or Component Unit.

## **C. ENTITIES COVERED BY THIS POLICY**

The Policy applies to all units within the University, to direct support organizations ("DSO"), to component units ("CU"), and to units for which the University is financially and legally accountable. DSOs are separate not-for-profit corporations organized and operated exclusively to assist the University in achieving its mission. CUs are organizations operated exclusively to assist the University achieve its mission. In accordance with Florida Statutes and Rules and University Regulations and Policies, these organizations receive, hold, invest and administer property and make expenditures to or for the benefit of the University.

All University, DSO, and CU debt financings, to the extent such debt financings are allowed by applicable law, require approval by the DSO and CU Boards, the University Board of Trustees, and the Florida Board of Governors, and such projects shall be managed by the University Chief Financial Officer or designated financial officer of the appropriate DSO and/or CU.

#### **D. FINANCING OBJECTIVES**

The financing objectives below, combined with the judgment of the University, and DSO and/or CU as appropriate, provide a framework for decisions regarding the use and management of debt. The objectives are subject to review and change over time.

1. Identify eligible capital projects for debt financing. Restricting debt to projects that are critical to the mission of the University will ensure that debt capacity is optimally utilized. Projects that relate to the strategic objectives of the University and projects which are self-funding with associated revenues will receive priority consideration.
2. Maintain favorable access to capital. Management will manage the timing and overall level of debt to ensure low-cost and timely access to the capital markets.
3. Limit risk within the debt portfolio. Management will balance the goal of achieving the lowest cost of capital with the goal of limiting exposure to interest rate risk and other financing and credit risks.
4. Manage credit to maintain the highest possible credit rating. Maintaining the highest possible credit rating will facilitate the issuance of debt at favorable cost. Outstanding debt will be limited to a level that will maintain acceptable credit ratings from the credit rating agencies. While maintaining or attaining a specific credit rating is not an objective of this Policy, the University Chief Financial Officer and University Controller will monitor the University's credit ratings and assess factors that might affect those ratings.

#### **E. RESPONSIBILITIES**

Pursuant to the delegated authority of the University President, the responsibility for implementing the Policy and its procedures lies with the University Chief Financial Officer. The University Chief Financial Officer may delegate debt management duties to other officers.

The Controller will provide direction for managing outstanding University debt and the respective financial officer of the DSO or CU will be responsible for managing the outstanding debt of the relevant organization. Debt management guidance, review, and recommendations will be provided by the University Chief Financial Officer and Controller.

## F. DEBT MANAGEMENT STRATEGIES

To achieve its financing objectives above, the University will adopt the following debt management strategies and procedures. These strategies will be reviewed and modified by the University over time.

### 1. Funding Strategies

- (a) Only capital projects that relate to the mission of the University will be considered for debt financing.
- (b) Projects which are self-funding or can create budgetary savings will receive priority consideration.
- (c) The Chief Financial Officer will prioritize all projects put forward for funding.
- (d) Projects supported by a security pledge that meet debt service obligations and provide for operations will be considered.
- (e) Cash reserves, philanthropy, and other sources of legally available funds are expected to finance a portion of the cost for the University's or, as appropriate, the DSO's and/or CU's investment in facilities.
- (f) Debt is to be used sparingly and strategically.
- (g) The University, in the context of this Policy, will consider alternative financing arrangements when appropriate and advantageous to the University.

### 2. Debt Capacity Assessment

- (a) This Policy requires the assessment of University debt capacity using key financial ratios. These ratios should be consistent with those used in the capital markets and will constitute benchmarks for debt capacity. The ratios will be evaluated over the past several years and will be compared to appropriate industry medians at specific rating levels.

The following ratios, supplemented from time to time with other measures, will be calculated on a University-wide basis and reported annually and on a pro forma basis when new debt is issued, and will be revised to reflect any changes in the capital markets and accounting standards:

- Actual Debt Service Coverage (x)  
Measures the actual margin of protection for annual debt service payments from annual operations.  
*The Sum of:*  
*operating surplus (deficit)*  
*plus depreciation expense*  
*plus interest expense*  
*Divided by total principal and interest expense.*
- Actual Debt Service to Operations (%)  
Measures the ability to pay debt service associated with all outstanding debt and the impact on the overall budget.  
*Actual annual debt service*

*Divided by total operating expenses.*

- Operating Margin (%)

Measures the operating surplus on each dollar of operating revenue.

*Operating surplus (deficit)*

*Divided by total operating revenue.*

- Expendable Financial Resources to Direct Debt (x)

Measures coverage of direct debt by financial resources that are ultimately expendable.

*The Sum of:*

*unrestricted net assets*

*plus restricted expendable net assets*

*plus foundation unrestricted / temporarily restricted net assets*

*less foundation net investment in plant*

*Divided by outstanding direct debt.*

- Expendable Financial Resources to Operations (x)

Measures coverage of operating expense by financial resources that are ultimately expendable.

*The Sum of:*

*unrestricted net assets*

*plus restricted expendable net assets*

*plus foundation unrestricted / temporarily restricted net assets*

*less foundation net investment in plant*

*Divided by total operating expense.*

(b) Target ratios or Policy limits may be established as part of this Policy. These targets or limits will vary depending on risk tolerance and strategic objectives.

(c) The above ratios will be in addition to the required ratios defined in each financing document.

### **3. Debt Instruments**

(a) Tax-Exempt Debt. Tax-exempt debt is beneficial and efforts will be made to maximize the amount of tax-exempt debt outstanding under the Policy.

(b) Taxable Debt. The University debt portfolio will be managed to minimize the amount of taxable debt outstanding. Taxable debt will be used to fund projects ineligible for tax-exempt financing.

### **4. Financing Structures**

(a) Funding risk is reduced by maintaining diverse sources for project financing in addition to debt, including gifts and donations, equity contributions and public-private partnerships.

(b) Funding risk is also reduced by maintaining diverse sources of pledged revenues or security for the debt.

- (c) Consideration will be given to the credit quality of the proposed transaction and likely credit ratings, access to public or private capital markets, competitive or negotiated sales, credit enhancement, bond covenants, debt service reserves, whether funded by bond proceeds or cash balances, compliance and reporting requirements.

## **5. Variable Interest Rate Exposure**

- (a) Due to the typically low interest rate cost of variable rate debt relative to fixed rate debt, it may be beneficial for the University to maintain a portion of outstanding debt in a variable rate mode.
- (b) Variable rate debt, however, introduces a number of significant risks: the potential volatility of debt service requirements, a risk that associated credit arrangements that expire prior to the maturity of the underlying debt may be difficult or costly to renew, financing arrangements that may include rating triggers or covenants that could accelerate debt repayment and collateral pledge requirements. Thus, the amount of variable rate debt not swapped to fixed rates will be limited as a portion of the total amount of outstanding University debt. Fixed rate debt will be the primary source of capital infrastructure financing.
- (c) The amount of variable rate debt will vary depending on liquidity constraints, capital market conditions and the level of interest rates.

## **6. Off-Balance Sheet Financing**

- (a) Off-balance sheet financing may be considered by the University when it is desirable to work with a third party for risk sharing and for leasing.
- (b) The effect of such financing will be considered on the cost of capital, credit ratings and debt capacity, making the assumption that the financing is included on the balance sheet.
- (c) Off-balance sheet financing will conform to the Florida Board of Governors' Public-Private Partnership Guidelines, effective as of March 28, 2019, and any subsequent amendments thereto.

## **G. DEBT MANAGEMENT PRACTICES**

### **1. Debt Administration**

- (a) The University Chief Financial Officer, who may delegate duties to other officers, will be responsible for structuring new University transactions, managing project funds and developing repayment schedules from units. The designated financial officer of the appropriate DSO or CU will have similar responsibilities for the DSO or CU.
- (b) The University's outstanding debt will be managed by the Controller. The DSO's and CU's outstanding debt will be managed by the designated financial officer of the DSO and CU.

- (c) The Controller will review debt management practices and new transactions reported by the University, and the DSOs and CUs, at least on a quarterly basis with and will provide guidance and recommendations to the University Chief Financial Officer.
- (d) In circumstances where the University issues debt for capital projects benefiting multiple units, the Controller will pool the debt and allocate funds and financing costs for the various projects to the units on a consistent basis.
- (e) The University Chief Financial Officer will review proposals for new financed projects and rank them according to the foregoing University objectives and strategy.
- (f) The University Chief Financial Officer will review, at least annually, the University's debt capacity, repayment sources and other capital market, budget, and financing considerations.
- (g) The University Board of Trustees and the DSO and CU Boards, if applicable, must approve capital projects before issuing the debt.

## **2. Structure**

- (a) To obtain the lowest possible financing costs, debt should be structured with the strongest possible authorized security.
- (b) Debt maturity structures will not exceed the useful life of the facilities financed.
- (c) Debt service should not exceed the expected revenues used to repay the debt at any time.
- (d) Call features should be structured to provide maximum flexibility relative to cost.

## **3. Methods of Sale**

- (a) Negotiated or competitive debt transactions will be considered on a case-by-case basis.
- (b) Private placements will be considered for debt transactions where the size is too small or the structure is too complicated for public debt issuance.

## **4. Purchase of Insurance or Other Credit Enhancement**

- (a) Insurance and other credit enhancement opportunities will be evaluated and utilized if they are considered cost effective and when they do not require material debt and operating restrictions.

## **5. Selection of Underwriters and Advisors**

- (a) A competitive selection process will be utilized to select senior and co-managing underwriters. This process will serve to select a group of lead underwriters for debt issuance for a specified period. The process will also be utilized to pre-qualify a roster of other firms for participation on the

underwriting team. A competitive or negotiated process will be utilized for any single issue.

- (b) Financial and legal advisors to the University and DSO's and CU's for debt issuance and management requirements will be selected from a request-for-proposal process from time to time to serve for a specified period. Advisors may be selected for any single issue utilizing a competitive or negotiated process.

## **6. Refunding Targets**

- (a) Outstanding debt will be monitored for refunding opportunities.
- (b) As a guideline, refunding debt that produces a 5% or greater net present value will be considered.
- (c) Refunding outstanding debt will also be considered if the University benefits from eliminated restrictive covenants, payment obligations, reserve and/or security requirements or other obligations, or from consolidation into larger, more cost-effective transactions.

## **7. Communications**

- (a) Communication and partnership with the Florida Board of Governor's Office ("Board Office") and the State Division of Bond Finance ("DBF") is crucial in the University managing its debt. As such, communication points between the University, the Board Office, and the DBF shall adhere to those established in the Board of Governors' Debt Management Guidelines for Capital Outlay Projects revised March 23, 2021, and any subsequent revisions.

## **H. Reporting to the Board of Trustees**

The Controller will present an annual report to the Board of Trustees on debt issued and outstanding, the estimated University debt capacity, and the credit ratings. The designated financial officer of the DSO or CU will submit information as requested by the Controller for this annual report.

## **I. Reporting Subsequent Events and Amendments to the Board of Governors**

The Controller will timely notify the Board of Governors and the Division of Bond Finance of any proposed changes in the terms or conditions of debt issued by the University or DSO. No material changes shall be made without specific Board authorization, which may include items such as, but not limited to:

- Extending maturities
- Changes in bond covenants
- Changes in pledged revenues
- Debt acceleration
- Cross default

- Changes to remedies provided to investors
- Variable rate refundings
- Other actions that may reduce debt service coverage or credit ratings
- Termination or modification of swap agreements
- Use of derivatives

**J. ARBITRAGE AND INVESTMENT OF BOND PROCEEDS**

Compliance with arbitrage requirements on invested tax-exempt bond funds will be maintained. Proceeds that are to be used to finance construction expenditures are excepted from the filing requirements, provided the proceeds are spent in accordance with requirements established by the IRS. Any arbitrage rebate liability should be calculated and funded annually.

**K. DISCLOSURE**

Primary and continuing disclosure requirements will be met in accordance with Rule 15c2-12 of the Securities and Exchange Commission (SEC), Florida Statutes or Rules, as applicable, and best practices including applicable policies, procedures, and guidelines. Financial reports, statistical data and descriptions of any material events will be submitted as required under outstanding bond indentures.

*Adopted by the Florida Polytechnic University Board of Trustees on \_\_\_\_\_.*

*Chair's signature: \_\_\_\_\_*



# **DEBT MANAGEMENT GUIDELINES**

(for Capital Outlay Projects)

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## **I. INTRODUCTION**

### **The Need for and Purpose of Debt Management Guidelines**

The state universities of Florida and their direct support organizations (“DSOs”) have funded significant investments in infrastructure, such as buildings, equipment, land, and technology, to meet the needs of a growing student population and to upgrade and maintain existing capital assets. A significant amount of the funding for this investment in infrastructure has been provided through the issuance of debt by the state for the benefit of the state universities and by the state universities’ direct support organizations (“DSOs”).

The purpose of these guidelines is to confirm that the state universities and their DSOs must engage in sound debt management practices and, to that end, the Board of Governors (“Board”) has formalized guiding principles for the issuance of debt by the state universities and their DSOs. Each state university shall adopt a debt management policy which is consistent with these guidelines and which shall be approved by the Board.

The following guidelines set forth guiding principles regarding state university and DSO debt-related decisions related to:

- a) The amount of debt that may prudently be issued.
- b) The purposes for which debt may be issued.
- c) Structural features of debt being issued.
- d) The types of debt permissible.
- e) Compliance with securities laws and disclosure requirements.
- f) Compliance with federal tax laws and arbitrage compliance.

These principles will facilitate the management, control and oversight of debt issuances for the purpose of facilitating ongoing access to the capital markets which is critical to the financing of needed infrastructure.

In furtherance of this objective, the provisions of these guidelines shall be followed in connection with the authorization, issuance and sale of university and DSO debt. However, exceptions to the general principles set forth herein may be appropriate under certain circumstances. Also, additional guidelines and policies may be necessary as new financial products and debt structures evolve over time.

For purposes of these guidelines:

i. “debt” means bonds, loans, promissory notes, lease-purchase agreements, certificates of participation, installment sales, leases, or any other financing mechanism or financial arrangement, whether or not a debt for legal purposes, for financing or refinancing, for or on behalf of a state university or a direct support organization, the acquisition, construction, improvement or purchase of capital outlay projects;

ii. “capital outlay project” means (i) any project to acquire, construct, improve or change the functional use of land, buildings, and other facilities, including furniture and equipment necessary to operate a new or improved building or facility, and (ii) any other acquisition of equipment or software; and

iii. “financing documents” means those documents and other agreements entered into by the state university or the DSO establishing the terms, conditions and requirements of the debt issuance.

iv. “auxiliary enterprise” means any activity defined in section 1011.47(1), Florida Statutes, and performed by a university or a direct-support organization.

## **II. DEBT AFFORDABILITY AND CAPITAL PLANNING**

### **Concept of Affordability**

One of the most important components of an effective debt management policy is an analysis of what level of debt is affordable given a particular set of circumstances and assumptions. More comprehensive than simply an analysis of the amount of debt that may be legally issued or supported by a security pledge, the level of debt should be analyzed in relation to the financial resources available to the university and its DSOs, on a consolidated basis, to meet debt service obligations and provide for operating the university.

An analysis of debt affordability should address the impact of existing and proposed debt levels on an issuer’s operating budget and offer guidelines or ranges to policymakers for their use in allocating limited resources within the guidelines.

## **Debts That May Be Issued Without Board of Governors' Approval**

University boards of trustees may authorize the state universities and their DSOs, as applicable, to engage in the following types of financings without Board approval:

- Universities may finance the acquisition of equipment and software provided such financings are accomplished in accordance with the deferred-purchase provisions in Chapter 287, Florida Statutes.
- DSOs may finance the acquisition of equipment and software financings provided the overall term of the financing, including any extension, renewal or refinancings, hereof, does not exceed five years or the estimated useful life of the equipment or software, whichever is shorter.
- DSOs may issue promissory notes and grant conventional mortgages for the acquisition of real property, excluding student housing or any other facility that will compete with a university's existing auxiliary enterprise. However, no mortgage or note shall exceed 30 years.
- Debt secured solely with gifts and donations and pledges of gifts so long as the maturity of the debt, including extensions, renewals and refundings, does not exceed five years and so long as the facilities being financed have been included in the university's five-year capital improvement plan that has been approved by the Board.
- Refundings for debt service savings where final maturities are not extended, and the original financing was authorized by the Board of Governors, or a predecessor oversight board.
- Fully collateralized lines of credit intended to be used for temporary cash flow needs.
- Energy Performance-Based Contracts, in accordance with the provisions of section 1013.23, Florida Statutes, not to exceed \$10,000,000.
- Universities may borrow up to \$20,000,000 from a university DSO on a non-recourse basis to finance a capital project. The term of the borrowing may not exceed thirty (30) years, and the interest rate, if any, may not exceed current market interest rates. The university retains legal title to any capital project financed in whole or in part by such loan irrespective of whether the loan is repaid. The DSO is prohibited from transferring the note or any other instrument associated with the borrowing to any other entity.

### III. GENERAL DEBT ISSUANCE GUIDELINES

#### Approval Process and Required Information

*Timing.* The submission of proposed debt for approval by the Board shall be governed by the following process<sup>1</sup>:

- a) Following approval by the board of trustees, the university shall transmit to the Board Office a request for debt approval 90 days prior to the next regularly scheduled meeting of the Board. The university shall also provide a copy to the State Division of Bond Finance (“DBF”). The formal transmittal to the Board Office shall be in duplicate, hard copy, and bound in a three-ring binder, and include all the information required by these guidelines. Electronic copies of supporting documentation should be provided to the Board Office and the DBF, to the extent available. **The formal letter of transmission must be signed by the official point of contact for the university, and any exceptions to these Debt Guidelines shall be noted and explained.**
- b) During the review period, the Board Office shall review the information submitted for compliance with these guidelines and state law, analyze general credit issues associated with the proposed indebtedness, and review any analysis provided by DBF staff.
- c) Board and DBF staff shall jointly discuss with the university or DSO any issues, concerns or suggestions resulting from the review during the review period. As a result of these discussions, the university may amend the information submitted or explain why the suggestions were not incorporated. The Board Office will advise the university if it believes that any amended information is so significant that re-authorization by the board of trustees and/or DSO is required. During this period, if the debt being requested for approval is to be issued by DBF on behalf of a state university, DBF shall submit to the Board Office a form of a resolution for adoption requesting that DBF issue the debt.
- d) After the review period, the Board Office shall submit the agenda item with supporting documentation and all appropriate and required analyses to the Board for consideration at its next meeting. Supporting documentation for the agenda item shall also include the resolution to be adopted by the Board requesting issuance of the debt by DBF or a resolution approving issuance of the debt by the DSO.

*Required Information.* The following information shall be reviewed by the university board of trustees, and the DSO (if applicable) when considering the issuance of debt; and shall subsequently be submitted to the Board Office in support of a request for approval

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<sup>1</sup> Although not required, universities are encouraged to consult with the Board Office and the State Division of Bond Finance 30 days prior to formal approval of debt by the university board of trustees or the DSO, particularly for any debt with unusual features.

of the issuance of debt. Additionally, the university or DSO shall complete the “Checklist of Information Required for Submission to the Board Pursuant to Debt Management Guidelines,” and provide any additional information requested by the Board Office or DBF staff in connection with review of any proposed debt issuance.

- a) A resolution of the DSO board of directors approving the debt issuances, if applicable, and a resolution of the university board of trustees approving the debt issuance and authorizing the university to request Board approval of the debt issuance. For debt to be issued by DBF, at the request of the university, DBF staff will work with the university to determine a not-to-exceed amount of debt to be included in the board of trustees requesting resolution to the Board and in preparing required debt service and source-and-use schedules.
- b) The project program, feasibility studies or consultant reports (if available), and an explanation of how the project being proposed is consistent with the mission of the university and an executive project summary, including appropriate references to any related reports.
- c) Estimated project cost, with schedules drawn by month and including start and completion dates, estimated useful life, and the date bond proceeds are required.
- d) The sources-and-uses of funds, clearly depicting all costs, funding sources expected to be used to complete the project and the estimated amount of the debt to be issued.
- e) An estimated debt service schedule with the assumed interest rate on the debt clearly disclosed. If the proposed debt service is not structured on a level debt service basis, an explanation shall be provided which gives the reason why it is desirable to deviate from a level debt structure.
- f) One consolidated debt service schedule separately showing all outstanding debt related to or impacting the debt being proposed, the proposed debt and the new estimated total debt service.
- g) A description of the security supporting the repayment of the proposed debt and the lien position the debt will have on that security. If the lien is junior to any other debt, the senior debt must be described. Furthermore, a description of why the debt is proposed to be issued on a junior lien basis must be provided. A statement citing the legal authority for the source of revenues securing repayment must also be provided.
- h) If debt is to be incurred on a parity basis with outstanding debt, a schedule showing estimated compliance with any additional bonds requirement set forth in the documents governing the outstanding debt. The applicable provisions of the documents for bonds of DSOs should be provided.

- i) Financial statements for five years, if available, for the auxiliary, if auxiliary revenues are pledged.
- j) A five-year history, if available, and five-year projection of the revenues securing payment and debt service coverage. To the extent applicable, the projections must be shown on the individual project as well as the entire system. All revenue items securing repayment must be clearly set forth as separate line items. An explanation must be provided with regard to growth assumptions, and to the amount and status of approval of any rate increases. The effect of the rate increases on the projections and expected revenues and expenses for the new facility should be clearly set forth as a separate line item. If rate increases are necessary, a commitment must be made to increase rates to the needed levels. Major categories of any operating expenses should be set forth as separate line items with an explanation of assumptions regarding increases or decreases.
- k) Evidence that the project is consistent with the university's master plan or a statement that the project is not required to be in the master plan.
- l) For variable rate debt proposals:
  - i) the expected reduction in total borrowing costs based on a comparison of fixed versus variable interest rates;
  - ii) a variable rate debt management plan that addresses liquidity and interest rate risks and provides, at a minimum: a description of budgetary controls, a description of liquidity arrangements, a discussion of why the amount of variable rate debt being proposed is appropriate, and a plan for hedging interest rate exposure. If interest rate risks are to be mitigated by the use of derivatives, then evidence that the counterparty has a long term rating of at least an A/A2 and a swap management plan as set forth in the Board's Debt Management Guidelines must be submitted;
  - iii) a pro forma showing the fiscal feasibility of the project using current market interest rates plus 200 basis points;
  - iv) the total amount of variable rate debt including the proposed debt as a percentage of the total amount of university and DSO debt outstanding; and
  - v) the individual or position that will be responsible for the reporting requirements for variable rate debt as set forth in these guidelines.
- m) If all or any portion of the financing is contemplated to be done on a taxable basis, then evidence demonstrating that the issuance of taxable debt is in the best interest of the university must be submitted.
- n) A statement explaining whether legislative approval is required, and if required, an explanation as to when legislative approval will be sought or evidence that legislative approval has already been obtained.
- o) A statement that the debt issuance is in accordance with the university's debt management policy or, if not, an explanation of the specific variances as well as the reasons supporting the variances.

- p) If a request is made to employ a negotiated method of sale, an analysis must be provided supporting the selection of this method that includes a discussion of the factors set forth in section IV of these Guidelines.
- q) A description of the process used to select each professional engaged in the transaction, showing compliance with the competitive selection process required by these Guidelines. Specific contact information for each selected professional must be included and, at a minimum, should disclose the professional's name, firm name, address, email address, phone number and facsimile number.
- r) The most recent annual variable rate debt report.
- s) An analysis must be prepared and submitted which provides quantitative metrics justifying the need for the construction or acquisition of the project and explains why the project is essential to the university's core mission. There must also be a detailed assessment of private sector alternatives, and a determination of whether the private sector can offer a comparable alternative at a lower cost. This information may be included as part of a project feasibility study or may be a stand-alone report.
- t) An analysis must be prepared which calculates the expected return on investment or internal rate of return for a revenue-generating project or another appropriate quantitative measure for a non-revenue generating project.

*Approval.* The Board will consider the following factors in connection with its review and approval of university or DSO debt issuance.

- a) The debt is to provide funding for needed infrastructure of the university for purposes consistent with the mission of the university.
- b) The debt is being issued in compliance with the principles and guidelines set forth herein.
- c) The project information submitted is reasonable and supportable.
- d) The five-year projection of pledged revenues available to pay debt service should provide debt service coverage of at least 1.20x for both outstanding parity debt and for the proposed new debt for all years within the five-year projection period after giving credit for any capitalized interest and other revenues available for payment.
- e) Any requirements for the issuance of additional parity debt can be reasonably expected to be met.

## **Purposes for Which Debt May Be Issued**

Debt may be issued only to finance or refinance capital outlay projects as defined in these guidelines, including equipment and software; debt may not be approved to finance or refinance operating expenses of a university or a DSO.

Refunding bonds may be issued to achieve debt service savings. Refunding bonds may also be issued to restructure outstanding debt service or to revise provisions of Financing Documents if it can be demonstrated that the refunding is in the best interest of the university.

### **Committing University Resources for Debt Issued by Direct Support Organizations**

There may be occasions where the university considers committing its financial resources on a long-term basis in support of debt issued by a DSO or other component unit. While the nature of the commitment may not constitute a legal debt obligation of the university, it may affect the university's debt position and its available financial resources. Therefore, the university should evaluate the long-term fiscal impact upon the university's debt position and available resources before authorizing any such financial commitment. Additionally, the debt of any DSO may not be secured by an agreement or contract with the university unless the source of payments under such agreement or contract is limited to revenues that the university is authorized to use for the payment of debt service. Any such contract or agreement shall also be subject to the requirements set forth under "Security Features – Pledged Revenues" herein.

### **Credit Quality and Ratings**

In order to access the credit markets at the lowest possible borrowing cost, it is recognized that credit ratings are critical. The coordinated delivery of information related to the university and its DSOs is an essential component of credit management. Therefore, for all debt:

- a) For existing bond programs, universities and DSOs shall strive to maintain or improve current credit ratings without adversely impacting the amount of debt which may be issued for any particular program.
- b) For all new rated debt, the university or DSO shall seek to structure the transaction to achieve a minimum rating of "A" from at least two nationally recognized rating agencies. Credit enhancement may be used to achieve this goal.
- c) Communications and other activities with rating agencies relating to credit ratings on university and DSO debt and activities relating to disclosure under Rule 15c2-12 of the Securities and Exchange Commission shall be conducted jointly between the university and/or DSO and the Board Office and DBF, under the management and coordination of the Board Office and DBF. The university or DSO must notify the Board Office and DBF in advance of any contact with a rating agency, such that the Board Office and DBF will have an adequate

opportunity to prepare and participate. In addition, the university or DSO must promptly notify the Board Office and DBF when a rating agency requests to schedule surveillance calls, site visits, or other activities, or whenever any request for information is received, such that the Board Office, and DBF will have an adequate opportunity to prepare and participate. The Board Office and DBF must be notified on the same day that a rating agency publishes their final rating action, should the final rating action not be provided directly to the Board Office and DBF. The Board Office and DBF will coordinate with the university and/or DSO on the appropriate level of engagement by the Board Office and DBF for any given call, draft report, site visit, etc., as determined by the Board Office and DBF. The Board Office and DBF must be copied on any communications between the university and/or the DSO and any rating agency. Each university and DSO must provide all information relating to credit ratings or disclosure to the Board Office and DBF and respond timely to requests from the Board Office and DBF for any information necessary to facilitate activities relating to credit ratings or appropriate disclosure.

- d) The Board Office will maintain a comprehensive listing of all university and DSO ratings.

## **Tax Status**

The universities have traditionally issued tax exempt debt which results in significant interest cost savings compared with the interest cost on taxable debt. Accordingly, all university and DSO debt should be issued to take advantage of the exemption from federal income taxes unless the university demonstrates that the issuance of taxable debt is in the university's best interest. With respect to debt which has a management contract with a private entity as part of the security feature, the management contract should comply, to the greatest extent practical, with tax law requirements to obtain tax exemption for the debt.

## **Security Features**

*Pledged Revenues.* The debt issued by universities and their DSOs may only be secured by revenues (including fund balances and budget surpluses) authorized for such purpose. The revenues which may secure debt include the following:

- a) Activity and Service Fee, subject to the limitation that annual debt service payable from these fees does not exceed five percent of the revenues derived therefrom.
- b) Athletic Fee, subject to the limitation that annual debt service payable from these fees does not exceed five percent of the revenues derived therefrom.
- c) Health Fee.
- d) Transportation Access Fee.

- e) Hospital Revenue.
- f) Licenses and Royalties for facilities that are functionally related to the university operation or DSO reporting such royalties and licensing fees.
- g) Gifts and Donations for debt not longer than five years.
- h) Overhead and indirect costs and other monies not required for the payment of direct costs of grants.
- i) Assets of university foundations and DSOs and earnings thereon.
- j) Auxiliary Enterprise Revenues, e.g., housing, parking, food service, athletic, retail sales, research activities.

Revenues which are not enumerated above may not be pledged to secure debt unless authorized by law for such purpose. In the case of university-issued debt, the pledge of revenues which secures debt should specifically identify the sources pledged and not use general or vague terms such as “lawfully available revenues.” Specifically identifying revenues used to secure debt will provide certainty and transparency as to the revenues that are encumbered and avoid ambiguity or uncertainty as to the issuer’s legal liability and universities and their DSOs should take this into consideration when determining the nature of the security it will provide in connection with a debt issuance. The guidelines for pledging revenues and securing debt shall also apply to debt structures which involve an agreement, contract or lease with a university or its DSOs, i.e., the revenues being pledged to secure debt must be specifically identified and lawfully available for such purpose. It is preferable, whenever possible, to secure debt with system pledges comprised of multiple facilities within a system, e.g., housing and parking, rather than stand-alone project finances.

*Functional Relationships.* Revenues from one auxiliary enterprise (a “Supporting Auxiliary Enterprise”) may not be used to secure debt of another auxiliary enterprise unless the Board, after review and analysis, determines that the facility being financed (the “Facility”) is functionally related to the Supporting Auxiliary Enterprise’s revenues being used to secure such debt. The Board must determine whether a functional relationship exists whenever revenues from a Supporting Auxiliary Enterprise will be used to pay or secure the debt of a Facility or when proceeds of bonds issued by a Supporting Auxiliary Enterprise will be used, directly or indirectly, to pay costs relating to a Facility. When a functional relationship is established between a Facility and a Supporting Auxiliary Enterprise, only that portion of the Supporting Auxiliary Enterprise’s revenues that exceed its operating requirements and debt service, if any, may be pledged to secure such debt; provided that such pledge may be on parity with outstanding debt if permitted by the covenants and conditions of the outstanding debt.

A functional relationship exists when a nexus is established between the Facility and the Supporting Auxiliary Enterprise’s revenues. Whether a Facility is functionally related to the Supporting Auxiliary Enterprise’s revenues must be determined on a case

by case basis, taking into consideration the unique facts and circumstances surrounding each individual situation.

Examples of functional relationships include, but are not limited to, a parking facility intended to provide parking to residents of a student housing facility and located within reasonably close proximity to a student housing facility; a food services facility intended to serve residents of a student housing facility and located within reasonably close proximity to a student housing facility; or shared infrastructure (e.g. water lines, sewer lines, utilities, plaza areas) located within reasonably close proximity to both the Facility and the Supporting Auxiliary Enterprise. While representations that a Facility will provide general benefits to or enhance the experience of the student body are desirable, this factor alone is not determinative in and of itself to establish a functional relationship between the Facility and the Supporting Auxiliary Enterprise's revenues.

*Lien Status.* All bonds of a particular program should be secured by a first lien on specified revenues. Additionally, bonds should generally be equally and ratably secured by the revenues pledged to the payment of any outstanding bonds of a particular bond program. However, the creation of a subordinate lien is permissible if a first lien is not available or circumstances require.

*Reserve Fund.* Debt service reserve requirements may be satisfied by a deposit of bond proceeds, purchase of a reserve fund credit facility, or funding from available resources over a specified period of time. In the submission of a request for debt issuance, it is preferred, though not required, that the bond size for the proposed debt include provisions for funding a reserve from bond proceeds. This will ensure that in the event the university is unable to obtain a reserve fund credit facility it will still have an authorized bond amount sufficient to fund its needs. Debt service reserve requirements may also be satisfied with cash balances.

*Credit Enhancement.* Credit enhancement is used primarily to achieve interest cost savings. Accordingly, the state universities and their DSOs should consider the cost effectiveness of bond insurance or other credit enhancements when evaluating a debt issuance and the overall cost thereof. Any bond insurance or credit enhancement should be chosen through a competitive selection process analyzing the cost of the insurance or credit enhancement and the expected interest cost savings to result from their use. The primary determinant in selecting insurance or other credit enhancement should be price and expected interest cost savings; however, consideration may also be given to the terms of any arrangement with the provider of insurance or other credit enhancement.

*Capitalized Interest.* Capitalized interest from bond proceeds is used to pay debt service until a revenue producing project is completed or to manage cash flows for debt service in special circumstances. Because the use of capitalized interest increases the cost of the financing, it should only be used when necessary for the financial feasibility of the project.

## **Structural Features**

*Length of Maturity.* In addition to any restriction on the final maturity imposed by the constitution or laws of the state, as a general guideline, the final maturity on bonds should not exceed thirty years.

Debt secured by gifts and donations shall not be considered long-term financing, but may be used as a temporary or construction loan to accelerate construction of facilities. Accordingly, the maturity of debt secured by gifts and donations shall not exceed five years, including roll-overs or refinancings except refinancings to implement permanent financing. Debt issued to finance equipment and software may not be longer than five years or the useful life of the asset being financed, whichever is shorter. Lastly, the final maturity of the debt should not exceed the estimated useful life of the assets being financed.

*Debt Service Structure.* Generally, debt should be structured on a level debt basis, i.e., so that the annual debt service repayments will, as nearly as practicable, be the same in each year. A deviation from these preferences is permissible if it can be demonstrated to be in the university's best interest, such as restructuring debt to avoid a default and not to demonstrate feasibility of a particular project.

*Redemption Prior to Maturity.* A significant tool in structuring governmental bonds is the ability to make the bonds callable after a certain period of time has elapsed after issuance. This provides the advantage of enabling the issuer to achieve savings through the issuance of refunding bonds in the event interest rates decline. Although the ability to refund bonds for a savings is advantageous, there may be situations where a greater benefit of lower interest rates may be realized by issuing the bonds as non-callable. Accordingly, there is a strong preference that bonds issued by a university or DSO be structured with the least onerous call features as may be practical under then prevailing market conditions. Bonds of a particular issue may be sold as non-callable if it is shown to be in the best interest of the university or DSO.

*Debt Issued with a Forward Delivery Date.* Debt issued by a university or DSO may be issued with a delivery date significantly later than that which is usual and customary. This debt typically carries an interest rate penalty associated with the delay in delivery. There are also additional risks that delivery will not occur. Debt with a forward delivery date may be issued if the advantages outweigh the interest rate penalty which will be incurred and the university and DSO are protected from adverse consequences of a failure to deliver the debt.

## **Interest Accrual Features**

*Fixed Rate, Current Interest Debt.* Fixed rate debt will continue to be the primary means of financing infrastructure and other capital needs. However, there may be circumstances where variable rate debt is more appropriate, in which case, the state university or DSO shall provide documentation as noted in these guidelines for such debt.

*Derivatives.* Alternative financing arrangements, generally referred to as derivatives, are available in the market as an alternative to traditional bonds. Under certain market conditions, the use of alternative financing arrangements may be more cost

effective than the traditional fixed income markets. However, these alternative financing instruments, such as floating to fixed swap agreements, have characteristics and carry risks peculiar to the nature of the instrument which are different from those inherent in the typical fixed rate financing. Although the universities and their DSOs should normally continue issuing conventional fixed rate bonds, alternative financing instruments may be used when the inherent risks and additional costs are identified and proper provision is made to protect the Board, the university, and the DSO from such risks. In determining when to utilize alternative financing arrangements, the availability of the requisite technical expertise to properly execute the transaction and manage the associated risks should be evaluated along with any additional ongoing administrative costs of monitoring the transaction. Also, a comprehensive derivatives policy should be established by the university or their DSOs and approved by the Board prior to approving transactions using derivatives products.

*Capital Appreciation Bonds.* Normally, capital appreciation bonds, which do not require current debt service payments, should not be used. However, when a compelling university interest is demonstrated, capital appreciation bonds may be issued.

*Variable Rate Bonds.* Variable rate debt may be issued where, considering the totality of the circumstances, such bonds can reasonably be expected to reduce the total borrowing cost to the university or the DSO over the term of the financing. The availability of the requisite technical expertise to properly manage the risks and execution of the variable rate transaction should be evaluated along with any additional ongoing administrative costs of monitoring the transaction. There should be a solid understanding of the liquidity risk and interest rate risks associated with variable rate debt. Further, there should be a debt management plan that mitigates, to the extent possible, these risks over the life of the debt. The following guidelines should apply to the issuance of variable rate debt:

- a) *Expected reduction in total borrowing cost.* In determining reasonably expected savings, a comparison should be made between a fixed rate financing at then current interest rates and a variable rate transaction, based on an appropriate floating rate index. The cost of the variable rate transaction should take into account all fees associated with the borrowing which would not typically be incurred in connection with fixed rate bonds, such as tender agent, remarketing agent, or liquidity provider fees.
- b) *Limitation on variable rate debt.* The amount of variable rate debt and interest derivative exposure is dependent on several factors associated with these types of debts. Included in the factors associated with these instruments are the university's/DSO's operating flexibility and tightness of budget, access to short and long term capital, the likelihood of a collateral call or termination payment, and the university's/DSO's financial expertise. The level to which universities may utilize variable rate debt obligations ("VRDO") and interest derivatives (like swaps, collars, and caps) is subject to an understanding of the risks associated and a debt policy that adequately addresses the additional risks.

- c) *Budgetary controls.* To avoid a situation in which debt service on variable rate bonds exceeds the annual amount budgeted, the following guidelines should be followed in establishing a variable rate debt service budget:
- i) A principal amortization schedule should be established, with provisions made for payment of amortization installments in each respective annual budget;
  - ii) Provide for payment of interest for each budget year using an assumed budgetary interest rate which allows for fluctuations in interest rates on the bonds without exceeding the amount budgeted. The budgetary interest rate may be established by: (1) using an artificially high interest rate given current market conditions; or (2) setting the rate based on the last 12 months actual rates of an appropriate index plus a 200 basis point cushion or spread to anticipate interest rate fluctuations during the budget year. The spread should be determined by considering the historical volatility of short-term interest rates, the dollar impact on the budget and current economic conditions and forecasts; or, (3) any other reasonable method determined by the university or DSO and approved by the Board;
  - iii) The amount of debt service actually incurred in each budget year should be monitored monthly by the university or DSO to detect any significant deviations from the annual budgeted debt service. Any deviations in interest rates which might lead to a budgetary problem should be addressed immediately; and
  - iv) As part of the effort to monitor actual variable rate debt service in relation to the budgeted amounts and external benchmarks, the university or DSO should establish a system to monitor the performance of any service provider whose role it is to periodically reset the interest rates on the debt, i.e., the remarketing agent or auction agent.
- d) *Establish a hedge with short-term investments.* In determining the appropriate amount of variable rate debt which may be issued by the universities or their DSOs, consideration should be given to mitigating the variable interest rate risk by creating a hedge with short-term investments. This “hedge” mitigates the financial impact of debt service increases due to higher interest rates because, as debt service increases, the university’s or DSO’s earnings on short-term investments also increases. Appropriate personnel should monitor the hedge monthly. Short-term investment as a hedge is one of several methods of mitigating interest rate risk. The ratio of such short-term investments to variable debt needs to be examined in conjunction with other interest rate risk hedging, striking an overall balance to minimize interest rate risk.
- e) *Variable interest rate ceiling.* The bond documents should include an interest rate ceiling of no greater than 12%.
- f) *Mitigating interest rate risks with derivatives.* Universities and DSOs are allowed to use various derivatives to mitigate the risk of rising interest rates on variable rate debt. However, the introduction of these derivatives also presents other risks for which the university must mitigate. These risks include rollover risk,

basis risk, tax event risk, termination risk, counterparty credit risk and collateral posting risk. At a minimum, a university/DSO engaging in this type of interest rate risk mitigation must provide:

- i) Evidence that the counterparty has a long term rating of at least an A/A2; and
- ii) A swap management plan that details the following:
  - a) Why the university is engaging in the swap and what the objectives of the swap are.
  - b) The swap counterparty's rating.
  - c) An understanding by the issuer of the cash flow projections that detail costs and benefits for the swap.
  - d) The plan of action addressing the aforementioned risks associated with swaps.
  - e) The events that trigger an early termination (both voluntary and involuntary) under the swap documents, the cost of this event and how such would be paid.
  - f) The method for rehedging variable rate exposure should early termination be exercised.
  - g) A list of key personnel involved in monitoring the terms of the swap and counterparty credit worthiness.
- g) *Liquidity.* One of the features typical of variable rate debt instruments is the bondholder's right to require the issuer to repurchase the debt at various times and under certain conditions. This, in theory, could force the issuer to repurchase large amounts of its variable rate debt on short notice, requiring access to large amounts of liquid assets. There are generally two methods for addressing this issue. With the first method, issuers that do not have large amounts of liquid assets may establish a liquidity facility with a financial institution which will provide the money needed to satisfy the repurchase. The liquidity provider should have a rating of A1/P1 or higher. The liquidity agreement does not typically run for the life of long-term debt. Accordingly, there is a risk that the provider will not renew the agreement or that it could be renewed only at substantially higher cost. Similar issues may arise if the liquidity provider encounters credit problems or an event occurs which results in early termination of the liquidity arrangement; in either case the issuer must arrange for a replacement liquidity facility. With the second method, issuers with significant resources may choose to provide their own liquidity. This approach eliminates the costs that would be charged by a third party liquidity provider and could mitigate the renewal/replacement risk. If a university/DSO chose to provide its own liquidity, the institution must maintain liquid assets or facilities equal to 100% of the outstanding VRDOs.
- h) *Submission of periodic reports.* By November 30<sup>th</sup> of each year, the university will prepare and submit to the board of trustees and the Board an annual variable rate debt report showing the position during the previous period of the university or DSO variable rate debt with respect to the following measures:

- i) the total principal amount of variable rate debt to principal amount of total debt;
- ii) the amount of debt service accrued during the reporting period in relation to the pro-rata amount of annual budgeted debt service for the reporting period. If the amount of debt service which accrued during the reporting period exceeded the pro-rata amount of annual budgeted debt service for the period, the university shall explain what actions were taken to assure that there would be sufficient revenues and budget authority to make timely payments of debt service during the subsequent years; and
- iii) the amount of variable rate debt in relation to the amount of the university's and/or DSO's short-term investments, and any other strategies used to hedge interest rate risk.

### **Other Types of Financings**

*Refunding Bonds.* Generally, refunding bonds are issued to achieve debt service savings by redeeming high interest rate debt with lower interest rate debt. Refunding bonds may also be issued to restructure debt or modify covenants contained in the bond documents. Current tax law limits to one time the issuance of tax-exempt advance refunding bonds to refinance bonds issued after 1986. There is no similar limitation for tax-exempt current refunding bonds. The following guidelines should apply to the issuance of refunding bonds, unless circumstances warrant a deviation therefrom:

- a) Refunding bonds should be structured to achieve level annual debt service savings.
- b) The life of the refunding bonds should not exceed the remaining life of the bonds being refunded.
- c) Advance refunding bonds issued to achieve debt service savings should have a minimum target savings level measured on a present value basis equal to 5% of the par amount of the bonds being advance refunded. The 5% minimum target savings level for advance refundings should be used as a general guide to guard against prematurely using the one advance refunding opportunity for post-1986 bond issues. However, because of the numerous considerations involved in the sale of advance refunding bonds, the 5% target should not prohibit advance refundings when the circumstances justify a deviation from the guideline.
- d) Refunding bonds which do not achieve debt service savings may be issued to restructure debt or provisions of bond documents if such refunding serves a compelling university interest.

*Certificates of Participation and Lease-Type Financing.* The universities or their DSOs may utilize these financing structures for all purposes, but it shall be considered as debt for the purposes of these guidelines and the universities shall always budget and make available monies necessary to pay debt service, notwithstanding the right to cancel the lease. Additionally, for lease purchase financings of equipment, universities and DSOs should consider using the state's consolidated equipment financing program if it will reduce costs and ensure a market interest rate on the financing.

*Conversions of existing variable rate debt.* A conversion between interest rate modes pursuant to the provisions of variable rate financing documents does not require Board approval. However, ten days prior to the conversion, the universities or their DSOs must notify the Board Office of a conversion and provide a summary of the terms of (i.e. interest rate, debt service schedule, etc.) and reasons for the conversion. The universities and DSOs should answer all questions and provide any additional information that Board staff deem necessary to fully understand the conversion.

## **IV. METHOD OF SALE AND USE OF PROFESSIONALS**

### **Analysis of Method of Sale**

It is in the best interests of the universities and their DSOs to use the method of sale for their debt that is expected to achieve the best sale results. Based upon the facts and circumstances with regard to each individual financing, it may be more appropriate to sell debt through either a competitive sale or through negotiation. Accordingly, the universities and their DSOs may utilize either a competitive or negotiated sale. If, however, a request is made for a DSO to sell debt using a negotiated sale, the university must provide the Board with an analysis showing that a negotiated sale is desirable. The analysis should include, but not necessarily be limited to, a consideration of the following factors:

- a) Debt Structure
  - i) pledged revenues – strong revenue stream vs. limited revenue base;
  - ii) security structure – conventional resolution, cash flow, rate and coverage covenants vs. unusual or weak covenants;
  - iii) debt instrument – traditional serial and term bonds vs. innovative, complex issues requiring special marketing; and
  - iv) size – a smaller transaction of a size which can be comfortably managed by the market vs. a large size which the market cannot readily handle.
- b) Credit Quality
  - i) ratings – “A” or better vs. below single “A”; and
  - ii) outlook – stable vs. uncertain.
- c) Issuer
  - i) type of organization – well-known, general purpose vs. special purpose, independent authority;
  - ii) frequency of issuance – regular borrower vs. new or infrequent borrower; and
  - iii) market awareness – active secondary market vs. little or no institutional awareness.
- d) Market
  - i) interest rates – stable; predictable vs. volatile;
  - ii) supply and demand – strong investor demand, good liquidity vs. oversold, heavy supply; and
  - iii) changes in law – none vs. recent or anticipated

Bonds may also be sold through a private or limited placement, but only if it is determined that a public offering through either a competitive or negotiated sale is not in the best interests of the university or DSO.

## **Allocation of Bonds**

In the event a negotiated sale by a DSO is determined by the university to be in the university's best interest, syndicate rules shall be established which foster competition among the syndicate members and ensure that all members of the syndicate have an opportunity to receive a fair and proper allocation of bonds based upon their ability to sell the bonds.

## **Report on Sale of Bonds**

The university or DSO shall prepare a report on the sale of bonds or anytime it incurs debt. The report shall be prepared and provided to the Board as soon as practicable but in no event later than one month after closing the transaction, in the format and manner provided by the Board, which at a minimum shall include the following:

- a) The amount of the debt.
- b) The interest rate on the debt.
- c) A final debt service schedule or estimated debt service schedule if a variable rate debt or the interest rate is subject to adjustment.
- d) Any aspect of the transaction that was different from the transaction submitted for approval.
- e) Itemized list of all fees and expenses incurred on the transaction, including legal fees.
- f) For negotiated sale of bonds:
  - i) the underwriters' spread detailing the management fee;
  - ii) takedown by maturity and aggregate takedown;
  - iii) any risk component and an itemized list of the expense component;
  - iv) orders placed by each underwriter and final bond allocation;
  - iv) total compensation received by each underwriter; and
  - vi) any report or opinion of the financial advisor.
- g) Final official statement for publicly offered bonds.
- h) Bond insurance or any other form of credit enhancement and the terms thereof.
- i) Credit rating reports.

For any project financing approved by the Board on or after November 7, 2012, the university or DSO shall prepare an annual report to the Board and the Division of Bond Finance which updates information provided for the initial approval of the project. The report shall include information relating to the return on investment or internal rate of return for a revenue-generating project or another appropriate quantitative measure for a non-revenue generating project, and any other information as may be required. The format and specific timeframe for reporting shall be as specified by the Chancellor. However, the initial annual report shall be filed no later than November 30 after the project has been placed in service for one full fiscal year.

## **Selection of Financing Professionals**

The use of underwriters for negotiated financings and the use of financial advisors for negotiated and competitive offerings is necessary to assist in the proper structuring and sale of debt. To assure fairness and objectivity in the selection of professionals and to help select the most qualified professional, the selection of underwriters and financial advisors should be accomplished through a competitive selection process. A competitive selection process allows the universities and their DSOs to compare more professionals and obtain the best price and level of service.

## **V. DISCLOSURE**

### **Primary Disclosure**

Universities and DSOs shall use best practices in preparing disclosure documents in connection with the public offer and sale of debt so that accurate and complete financial and operating information needed by the markets to assess the credit quality and risks of each particular debt issue is provided.

The disclosure recommendations of the Government Finance Officers Association's "Disclosure for State and Local Governments Securities," and the National Federation of Municipal Analysts' "Recommended Best Practices in Disclosure for Private Colleges and Universities" should be followed to the extent practicable, specifically including the recommendation that financial statements be prepared and presented according to generally accepted accounting principles.

### **Continuing Disclosure**

DSOs shall fulfill all continuing disclosure requirements set forth in the transaction documents and as required under Rule 15c2-12 of the Securities and Exchange Commission.

## **VI. POST-ISSUANCE CONSIDERATIONS**

### **Investment of Proceeds of Debt Issued by DSOs**

*Construction Funds.* Funds held for payment of debt service and all other funds held as required by the documents of any financing shall be invested consistent with the terms of the Financing Documents.

## **Arbitrage Compliance**

The university will comply with federal arbitrage regulations. Any arbitrage rebate liabilities should be calculated and funded annually.

## **Subsequent Events and Amendments**

The DBF and Board Office shall be timely notified of any proposed changes in the terms or conditions of debt issued by a university or DSO. No material changes shall be made without specific Board authorization, which may include items such as, but not limited to:

- Extending maturities
- Changes in bond covenants
- Changes in pledged revenues
- Debt acceleration
- Cross default
- Changes to remedies provided to investors
- Variable rate refundings
- Other actions that may reduce debt service coverage or credit ratings
- Termination or modification of swap agreements
- Use of derivatives

## **VII. EFFECT**

The foregoing guidelines shall be effective immediately and may be modified from time to time by the Board as circumstances warrant. The Board has the authority to approve deviations from these Guidelines after considering the facts and circumstances of each case, but any such exception shall comply with state law requirements and shall not establish a precedent applicable to these guidelines or any other financing transaction. The guidelines are intended to apply to all university and DSO debt, and not to adversely affect any university or DSO debt currently outstanding or projects approved by the Board or board of trustees prior to, or existing, as of January 26, 2006.

Authority: Section 7(d), Art. IX, Fla. Const., History: New 4-27-06, Amended 9-16-10, Amended 11-21-13, Amended 9-22-16, Amended 3-23-21.

**Florida Polytechnic University  
Governance Committee  
Board of Trustees  
May 24, 2022**

**Subject: Florida Poly Finance Corporation**

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**Proposed Committee Action**

Recommend to the Board of Trustees approval of the Florida Poly Finance Corporation's Articles of Incorporation and Bylaws and to authorize staff to file the necessary documents to establish the Corporation, if it is determined that the Corporation should obtain financing for Phases 2,3, and 4.

**Background Information**

The University recently issued an ITN which includes the construction of the next two new phases of residence halls (Phases 3 and 4), with the bundling in of the purchase of the existing Phase 2 residence hall. The University has held discussions with the Division of Bond Finance and the Florida Board of Governors to determine the best path forward related to the financing of the projects. One of the potential paths is to have a non-profit corporation that is a direct-support organization (DSO) of the University obtain the financing and own Phases 2, 3 and 4. Therefore, in the interest of time, the Board is being asked to approve the Articles of Incorporation and Bylaws for the Florida Poly Finance Corporation so that they can be used to establish the corporation if it is determined that the financing should be obtained through the corporation.

The articles of incorporation and bylaws were drafted by Ken Artin, outside counsel. Staff has reviewed the documents and found them to be consistent with the requirements of Florida Statutes section 1004.28, Board of Governors regulation 9.011 and the University's regulation 10.002.

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**Supporting Documentation:**

1. Bylaws of the Florida Poly Financing Corporation
2. Articles of Incorporation of Florida Poly Financing Corporation
3. Regulation FPU-10.002 University Direct Support Organizations.
4. Florida Statutes section 1004.28
5. Board of Governors Regulation 9.011 University Direct Support Organizations and Health Service Support Organizations

**Prepared by:** Gina DeIulio, Vice President and General Counsel

**BYLAWS**  
**OF**  
**FLORIDA POLY FINANCING CORPORATION**

**Effective [ ], 2022**

**BYLAWS  
OF THE  
FLORIDA POLY FINANCING CORPORATION**

**ARTICLE 1  
NAME**

The name of the Corporation shall be Florida Poly Financing Corporation, a Florida not-for-profit corporation (the "Corporation"). The Corporation shall maintain a registered office in the State of Florida and a registered agent at such office and may have other offices within or without the state.

**ARTICLE 2  
MEMBERS**

The Corporation shall have no members.

**ARTICLE 3  
BOARD OF DIRECTORS**

**Section 3.1    General Powers.**

The business, property, affairs and funds of the Corporation shall be managed, supervised and controlled by its Board of Directors (the "Board of Directors"), subject only to applicable law and the limitations contained in the Articles of Incorporation of the Corporation, these Bylaws, and the powers and duties reserved to The Florida Polytechnic University Board of Trustees (the "Board of Trustees") and the President of the Florida Polytechnic University (the "University") or the President's designee. The Board of Directors shall have the authority to adopt policy for the Corporation consistent with the Articles of Incorporation and these Bylaws.

**Section 3.2    Powers.**

The President of the University or designee shall have the following specific powers and duties with regards to this Corporation:

- (a) To monitor and control this Corporation's use of University resources;
- (b) To control the use of the University's name by this Corporation;
- (c) To monitor compliance of this Corporation with federal and state law; and
- (d) To recommend an annual budget to the Board of Directors of this Corporation.

**Section 3.3**    **Number.**

The Board of Directors of the Corporation shall consist of at least three (3), but no more than five (5) persons.

**Section 3.4**    **Appointment of Directors and Tenure.**

The directors of the Corporation shall be appointed in the following manner:

- (1)    One (1) director shall be the Chair of the Board of Trustees or the Chair's designee;
- (2)    One (1) director shall be the President of the University or the President's designee;
- (3)    One (1) director shall be selected jointly by the President of the University or the President's designee and the Chair of the Board of Trustees or the Chair's designee;
- (4)    Up to two (2) additional directors may be elected at the annual meeting of the Board of Directors by the then current directors.

Terms of office of the members of the Board of Directors shall be two (2) years in length. Notwithstanding the foregoing, the President of the University or the President's designee shall serve until the earlier of the President's resignation, removal from office or death. The President has the right to change the President's designee by written notice thereof to the Board of Directors. A vacancy on the Board of Directors with respect to elected members may be filled by a vote of the remaining directors at their sole and absolute discretion, however, the Chair of the Board of Trustees and the President shall designate the replacement for the directors appointed by them. If a director is appointed to fill a vacancy before the end of the term of such director's predecessor, such director shall serve for the remainder of the term of the director being replaced.

**Section 3.5**    **Removal of Directors.**

A director may resign at any time by submitting a written resignation to the Chair of the Board of Directors and the Executive Director. Any director, other than the director appointed by the Chair of the Board of Trustees, may be removed from the Board of Directors at any time with or without cause by a two-thirds vote of the Board of Directors.

**Section 3.6**    **Directors' Meetings.**

An annual meeting of the Board of Directors shall be held within the State of Florida, and other regular meetings of the Board of Directors may be held at such time and place as determined by the Chair of the Board or by the Executive Director. Special meetings of the Board of Directors may be called by the Chair of the Board or the Executive Director or Secretary of the Corporation or any two directors. Notice of meetings shall be provided

not less than five (5) days preceding any such meeting. Notice will be provided by personal delivery, U.S. mail, facsimile or email.

At all meetings of the Board of Directors, the presence of a majority of the total number of directors shall be necessary and sufficient to constitute a quorum for the transaction of business. Unless otherwise required by the Articles of Incorporation, these Bylaws or Florida Statutes, the act of a majority of the directors present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present may adjourn the meeting from time to time until a quorum shall be present for the transaction of business.

**Section 3.7   Public Notice.**

Public notice of any meeting of the Board or its committees shall be made as required by law in accordance with the policies and procedures of the University.

**ARTICLE 4  
OFFICERS**

**Section 4.1   Officers.**

The officers of this Corporation shall be the Chair, the Secretary, and such other officers as may be determined by the Board of Directors. Only members of the Board of Directors of the Corporation may be appointed or elected as officers of the Corporation. All officers shall have the authority to perform and shall perform such duties as described below:

**(1)   Chair.** The Chair shall preside at all meetings of the Board of Directors and shall do and perform such other duties as may be assigned by the Board of Directors.

**(2)   Secretary.** The Secretary shall keep full and accurate minutes of all meetings of the Board of Directors and other Board Committees. The Secretary shall transmit all notices required by these Bylaws. The Secretary may attest documents signed by the Executive Director in the name of the Corporation. The Secretary shall have charge of all official records of the Corporation, which shall be at all reasonable times open to examination of any director, and shall in general perform all duties incident to management of the office of the Secretary for the Board of Directors. Assistant secretaries may be appointed by the Secretary as deemed necessary and appropriate following notice to the Board.

**Section 4.2   Appointment and Term of Office.**

Officers of the Corporation shall be elected by the Board of Directors at the annual meeting. Each officer shall serve a term of two (2) years, each commencing immediately following such officer's election or appointment.

**Section 4.3**    **Removal.**

Any officer may be removed with or without cause by the Board of Directors whenever in its judgment the best interests of the Corporation would be served.

**Section 4.4**    **Vacancies.**

A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors.

**ARTICLE 5**  
**COMMITTEES**

**Section 5.1**    **Creation of Committees.**

The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, designate one or more other committees, such as an Executive Committee and Finance and Audit Committee, each to consist of one or more of the directors of the Corporation.

**Section 5.2**    **Committee Functions.**

Such other committees shall have such functions and may exercise the powers of the Board of Directors as are lawfully delegated and to the extent provided in the resolution or resolutions creating such committee or committees.

**Section 5.3**    **Meetings of Committees.**

Regular meetings of committees may be held with five (5) days' notice at such time and at such place as shall from time to time be determined by the committees. Notices will be provided personally, by U.S. mail, facsimile, or email.

**Section 5.4**    **Vacancies on Committees.**

Vacancies on committees shall be filled by the Board of Directors then in office at any regular or special meeting.

**Section 5.5**    **Minutes of Committees.**

Committees shall keep regular minutes of their proceedings and report the same to the Board of Directors when required.

**ARTICLE 6**  
**INDEMNIFICATION**

The Corporation shall indemnify each director, officer, employee and agent of the Corporation, and may indemnify any other person, to the full extent permitted by the

Florida Not For Profit Corporation Act and other applicable laws. The rights conferred by this Article 6 shall not be exclusive of any other right that any director, officer, employee, agent or other person may have or hereafter acquire under the Florida Not For Profit Corporation Act, any other statute or agreement, pursuant to a vote of disinterested directors, or otherwise. No repeal or modification of this Article 6 shall limit the rights of any director, officer, employee or agent to indemnification with respect to any action or omission occurring prior to such repeal or modification.

## **ARTICLE 7 AMENDMENT**

These Bylaws may be amended by the vote of a majority of the Board of Directors of this Corporation and the approval of the Board of Trustees. Amendments to the Bylaws shall be subject to policies, rules or regulations, which may be established by the Board of Trustees or the State of Florida.

## **ARTICLE 8 FISCAL MATTERS**

### **Section 8.1. Fiscal Year.**

The fiscal year for the corporation shall begin on July 1 and end on June 30 of the following year.

### **Section 8.2 Operating Budget.**

The annual operating budget for the Corporation shall be approved by the Board of Directors. The President of the University shall assure compliance with any requirements that may be established by the Board of Trustees or the State concerning budgetary review or approval.

### **Section 8.3 Financial Statements.**

The Executive Director shall render to the Board at its first meeting of each fiscal year, if available, preliminary and unaudited financial statements for the year just completed. The Executive Director will submit a treasurer's report at each regular meeting of the Board.

### **Section 8.4 Audit.**

After the close of each fiscal year, the Corporation shall cause a financial audit of its accounts and records to be conducted by an independent certified public accountant pursuant to Section 1004.28, Florida Statutes, as may be amended or supplemented, and in accordance with the rules adopted by the Auditor General pursuant to Section 11.45, Florida Statutes, as may be amended or supplemented. The President of the University shall submit the annual audit report to the Board of Trustees and the Auditor General. In addition, the Corporation shall provide a copy of its federal Application for Recognition of Exception (Form 1023) and each year shall provide a copy of its Form 990, Return of

Organization Exempt from Federal Income Tax, to the President of the University and to any other bodies as required by applicable laws of the State of Florida.

**ARTICLE 9  
EXECUTIVE DIRECTOR; EMPLOYEES**

The Chief Financial Officer of the University or such officer's designee shall serve as Executive Director of the Corporation. The Executive Director shall be responsible for the general, day-to-day management of the affairs of the Corporation. The Executive Director shall exercise such authority to accept gifts, collect revenues and make expenditures as he/she deems necessary. The Executive Director is authorized to direct the sale of real estate of the Corporation and is also authorized to execute, in the name of Florida Poly Financing Corporation, with the Secretary attesting, all certificates, contracts, leases, deeds, notes and other documents or legal instruments for and on behalf of the Corporation. The Executive Director shall be responsible for the maintenance and management of the Corporation's activities and personnel. A vacancy in the office of Executive Director shall be filled by the President of the University.

The Executive Director shall perform the functions of a treasurer for the Corporation. The Executive Director shall present the financial statements of the Corporation to the Board of Directors at each regular meeting of the Board of Directors and at such other times as the Board of Directors may determine. The Executive Director shall ascertain that a full and accurate account is made of all monies received and paid out on accounts administered by the Corporation and shall in general perform all duties incident to treasury for the Board of Directors.

The Board of Directors shall have the power to employ or to authorize the officers to employ such full-time or part-time employees as deemed necessary or appropriate for the conduct of the Corporation's business. Any person employed by the Corporation shall not be considered an employee of the State of Florida or an employee of the University by virtue of such person's employment by the Corporation. The Corporation shall provide equal employment opportunities to all persons regardless of race, color, religion, gender, age or natural origin.

**ARTICLE 10  
PARLIAMENTARY RULES**

The most recent edition of "Roberts Rules of Order" shall be followed in conducting the meetings of the Board of Directors, unless otherwise provided in these Bylaws.

**ARTICLE 11  
MISCELLANEOUS**

**Section 11.1 Checks.**

Checks, drafts or electronic fund transfers of funds of the Corporation may be signed/approved by the Executive Director or Chair. A facsimile may be used in lieu of

actual signatures. However, all checks in the amount of \$15,000 or greater must bear original signatures or, if facsimile signatures are used, must be initialed by the Executive Director or University President.

**Section 11.2 No Vested Rights.**

No member of the Board of Directors shall have any vested rights, interests, or privileges of, in or to the assets, functions, affairs or franchises of the Corporation or any right, interest or privilege which may be transferable or inheritable.

**Section 11.3 Confidentiality of Records.**

Upon receipt of a reasonable and specific request in writing and, to the extent provided by law, the Corporation will make public financial information including expenditures, documentation regarding completed business transactions and information about investment and management of its assets. The release of personal, financial information about a volunteer is prohibited.

**Section 11.4 Conflicts of Interest**

- (a) No director shall knowingly take any action or make any statement intended to influence the conduct of a fellow director in such a way as to confer any financial benefit on such director, or a family member of such director, or on any corporation in which the director is an employee or has a significant interest as a shareholder, director or officer.
- (b) In the event a matter comes before the Board of Directors or a Board committee for consideration, recommendation or decision that raises a potential or actual conflict of interest for any member of the Board of Directors or a Board committee, the member shall disclose the potential or actual conflict of interest as soon as the member becomes aware of it, and shall personally recuse himself or herself from participation in any discussions of or vote on the matter. Such disclosure shall be recorded in the minutes of any meeting in which the matter is considered, recommended or decided.
- (c) No contract or other transaction between the Corporation and one or more of its directors, or any other corporation, firm, association or entity in which one or more of the directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest, because such director or directors are present at the meeting of the Board of Directors, or committee thereof, which authorizes, approves, or ratifies such contract or transaction, or because of their votes are counted for such purpose, if: (i) the fact of such relationship or interest is disclosed or known to the Board of Directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested trustees; or (ii) the fact of such relationship or interest is disclosed or known to the directors entitled to vote and they authorize, approve, or ratify such contract or

transaction by vote or written consent; or (iii) the contract or transaction is fair and reasonable as to the Corporation at the time it is authorized by the Board of Directors or a committee.

- (d) All directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction.
- (e) At least once a year, there shall be a full written disclosure by each member of the Board of Directors of all relationships, fees, commissions or other remunerations furnished by the Corporation to a director, his or her company, employer or associate or by any organization in which a director has a significant beneficial ownership. Additionally, should any conflict arise at any time following completion of the written disclosure statement, the Member of the Board of Directors shall so promptly notify the Executive Director of the Corporation in writing. The Board of Directors, or an executive committee appointed by the Board, will be responsible for monitoring the application of this policy.

**Section 11.5 No Corporate Seal.**

The Corporation shall have no seal.

**Section 11.6 Rules of the Board of Trustees and the State**

The Articles of Incorporation and Bylaws shall be consistent with the applicable rules of the University and of the Board of Trustees and the State, including, but not limited to, the right of the University President to monitor and control the use of the resources of the University, including, but not limited to, the name of the University; and to monitor compliance of the Corporation with state and federal laws and rules of the Board of Trustees and the State.

ARTICLES OF INCORPORATION  
OF  
FLORIDA POLY FINANCING CORPORATION

The undersigned, acting as incorporator of a corporation not for profit pursuant to Chapter 617 of the Florida Statutes, adopts the following Articles of Incorporation.

ARTICLE I- NAME

The name of the Corporation is Florida Poly Financing Corporation.

ARTICLE II- PRINCIPAL PLACE OF BUSINESS AND MAILING ADDRESS

The address of the Corporation's principal office is 4700 Research Way, Lakeland, Florida 33805.

Article III – PURPOSES

The specific purposes for which this Corporation is organized are:

- (a) To exist and operate solely for scientific, educational, religious, and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (the "Code") and no part of the income or assets of this Corporation shall be distributed to, nor inure the benefit of, any individual;
- (b) To operate without regard to race, age, religion, sex, or national origin;
- (c) To be organized and operated as a University direct-support organization, as defined in Section 1004.28 of the Florida Statutes, as may be amended or supplemented;
- (d) To receive, hold, invest and administer property and to make expenditures to or for the exclusive benefit of (i) Florida Polytechnic University (the "University"), a member of the state university system of the State of Florida, or (ii) a research and development park or research and development authority affiliated with the University and organized under part V of Chapter 159 of the Florida Statutes;
- (e) To issue revenue bonds or other forms of indebtedness when such revenue bonds or other forms of indebtedness are used to finance or refinance capital projects which are to provide facilities necessary and desirable to serve the needs and purposes of the University;
- (f) To acquire real and personal property and to contract for sale and disposal of same;
- (g) To approve and execute contracts for the purchase, sale, lease or acquisition of commodities, goods, equipment, construction services, lease of real and personal property and construction;

(h) To carry out its functions such that no substantial part of the Corporation's activities shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office; and

(i) To operate, participate in or manage any other programs or activities that are not prohibited by law and that do not conflict with the provisions of Section 501(c)(3) of the Code.

#### ARTICLE IV — POWERS

The Corporation shall have and exercise all powers of a corporation not for profit as the same now exist or may hereinafter exist under the laws of the State of Florida. No part of the assets, income or profits of the Corporation shall be distributed to, or inure the benefit of, its members, directors or officers or any private individual, except that the Corporation shall be authorized and empowered to pay reasonable compensation to its employees for services rendered and to make payments and distributions in the furtherance of the purposes set forth herein. Notwithstanding any other provision hereof, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from federal income taxation under Section 501(c)(3) of the Code or by an organization, contributions to which are deductible under Section 170(c)(2) of the Code.

Upon certification as a direct support organization by The Florida Polytechnic University Board of Trustees (the "Board of Trustees"), the Corporation shall be authorized to use the property, facilities and personal services of the University, to receive, hold, invest or administer assets or property and to make expenditures for the benefit of the University. The Corporation further shall be authorized to issue revenue bonds, certificates of participation or other forms of indebtedness upon approval of the Board of Trustees and in accordance with the applicable laws of the State of Florida, and to enter into agreements to finance, design and construct, lease, lease-purchase, purchase, or operate facilities necessary and desirable to serve the needs and purposes of the University.

#### ARTICLE V - MEMBERS

The Corporation shall have no Members.

#### ARTICLE VI

#### DIRECTORS AND THE MANNER OF ELECTIONS OF DIRECTORS

The Corporation shall be managed by or under the direction of a Board of Directors. At all times, there shall be at least three but no more than five members of the Board of Directors. The Board of Directors shall carry out the purposes of the Corporation in compliance with these Articles of the Corporation and the Corporation's Bylaws. The method of appointment or election of directors shall be as stated in the Bylaws of this Corporation.

ARTICLE VII — DISSOLUTION

In the event of dissolution of the Corporation, the winding up of its affairs, the de-certification of the Corporation as a direct support organization by the Board of Trustees of the University, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual, and all assets remaining after the payment of the Corporation's debts shall be conveyed or distributed at the direction of the then Directors of the Corporation to The Florida Polytechnic University Board of Trustees, or if such organization has ceased to exist, to Florida Polytechnic University, or if such organization has ceased to exist, to such other organization or organizations that are exempt from federal income tax under Section 501(c)(3) of the Code as directed by the Board of Governors of the State of Florida.

ARTICLE VII — AMENDMENT

The Board of Directors of the Corporation may amend, alter or repeal any provision of these Articles of Incorporation in the manner now or hereinafter provided by Florida law; provided, however, that amendment shall not become effective until approved by the Board of Trustees after submission to them by the President of the University.

ARTICLE IX - INITIAL REGISTERED AGENT AND STREET ADDRESS

The name and the street address of the initial registered agent is Regina DeIulio, Esq., Vice President and General Counsel, 4700 Research Way, Lakeland, Florida 33805.

ARTICLE X – INCORPORATOR

The name and street address of the incorporator for these Articles of Incorporation are: Ken Artin, Esq., Bryant Miller Olive P.A.255 South Orange Avenue, Suite 1350, Orlando, Florida 32801.

ARTICLE XI – INDEMNIFICATION

Directors, officers, employees and agents of the Corporation shall be indemnified to the full extent permitted by Florida law.

IN WITNESS WHEREOF, I have set my hand and seal this \_\_\_\_ day of May, 2022.

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Ken Artin, Esq.

**CERTIFICATE OF ACCEPTANCE AS REGISTERED AGENT**

Having been named as the Registered Agent in the Articles of Incorporation of Florida Poly Financing Corporation, I hereby accept and agree to act in this capacity.

Dated: this \_\_\_ day of May, 2022

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Regina DeIulio, Esq.

## THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES

### **FPU-10.002 University Direct Support Organizations.**

(1) **Purpose.** The University President (“President”) may recommend to the Florida Polytechnic University (“University”) Board of Trustees (“BOT”) an organization, meeting the definition and requirements of Florida Statutes, Section 1004.28, to be established and certified a Florida Polytechnic University Direct Support Organization (“DSO”). Upon certification by the BOT, a DSO is authorized to use the property, facilities and personal services of the University in accordance with Board of Governor and University regulations, policies and procedures.

(2) **Certification.** In order to be considered for certification as a DSO, an eligible organization under Florida Statutes, Section 1004.28, must submit to the BOT proposed Articles of Incorporation and Bylaws. Any subsequent amendments to the Articles of Incorporation or Bylaws of the organization are subject to the approval of the BOT.

(3) **DSO employees.** Any person employed by the DSO shall not be considered to be an employee of Florida Polytechnic University by virtue of employment by the DSO.

(4) **Equal Employment Opportunities.** The DSO shall provide equal employment opportunities to all persons regardless of race, color, religion, sex, age, disability, marital status, veteran status, national origin, or any other basis protected by law.

(5) **Gifts to political committees prohibited.** The DSO is prohibited from giving, either directly or indirectly, any gift to a political committee, as defined in Florida Statutes, Section 106.011, for any purpose.

(6) **Selection and Appointment of DSO’s CEO/director.** The chief executive officer or director of the organization will be selected and appointed by the University President in consultation with the DSO’s governing board. The chief executive officer or director shall report to the President or a designee reporting directly to the President.

(7) **University president’s powers and duties.** The University President shall have the following powers and duties:

1. Monitor and control the use of University resources by the DSO.
2. Control the use of the University name by the DSO.
3. Monitor compliance of the DSO with federal and state laws.
4. Approve contributions of funds or supplements to support intercollegiate athletics.

(8) **Appointments to DSO board.** The Chair of the BOT shall appoint at least one representative to the governing board and the executive committee of each DSO and the President or designee shall serve on the governing board and the executive committee of each DSO. The BOT must approve all other appointments or reappointments to the DSO’s board of directors prior to them being effective.

(9) **Operating budget.** Each DSO must prepare, at least annually, a proposed operating budget for review and approval by the DSO's governing board and must be recommended by the President to the BOT for review.

(10) **Changes in planned expenditures.** Significant changes in planned expenditures in the DSO's approved budget shall be reported to the BOT as soon as practicable, but no later than the end of the quarter in which such changes were proposed.

(11) **BOT approval thresholds.** The DSO must get BOT approval when:

- (a) The DSO is acquiring real property in excess of five hundred thousand dollars (\$500,000).
- (b) The DSO is constructing or renovating a facility and the cost of construction or renovation exceeds five hundred thousand dollars (\$500,000).
- (c) The DSO is purchasing goods and services and the total value of the contract exceeds five hundred thousand dollars (\$500,000).

(12) **Debt management and P3 guidelines.** All debt issued by a DSO is subject to the SUS Debt Management Guidelines. All public-private partnership transactions involving a DSO are subject to the State University System Public-Private Partnership Guidelines.

(13) **State funds for travel prohibited.** DSOs are prohibited from using state funds for travel expenses incurred by the DSO.

(14) **Remuneration requirements.** University personal services used by a DSO are subject to the remuneration requirements set forth in section 1012.976, Florida Statutes.

(15) **Audit.** Each DSO shall cause an annual financial audit to be conducted, in accordance with applicable laws and rules, by an independent certified public accountant upon the close of each fiscal year for submission to the BOT for review and oversight. The BOT Chair and the University President may require and receive any records or data relative to the operations of the DSO from the DSO or from its independent auditors.

(16) **Audit review.** The BOT shall submit each DSO's annual audit report to the Auditor General and the Board of Governors for review no later than nine (9) months after the close of the fiscal year.

(17) **Tax exemption.** Each DSO shall submit its federal Internal Revenue Service application for Recognition from Exemption form (Form 1023) and its federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990) to the President.

(18) **Decertification.** The President may recommend and request that the BOT decertify a DSO if the President determines that the organization is no longer serving the best interests of the University. Any recommendation and request for decertification shall include a plan for disposition of the DSO's assets and liabilities.

(19) The DSO shall comply with all other obligations required by law, including those required by Florida Statutes, Section 1004.28, and applicable Board of Governors and University rules, regulations, policies and procedures.

*Authority:* Section 7(d), Art. IX, Fla. Const.; BOG Regulation Development Procedure dated March 23, 2006; 1004.28(2)(b) FS.

*History:* Formerly rule 6C13-10.002, 8.5.14, Amended and renumbered FPU-10.002, 12.5.18.

May 10, 2022

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## The 2021 Florida Statutes

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EARLY LEARNING-20 EDUCATION  
CODE

[Chapter 1004](#)  
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**1004.28 Direct-support organizations; use of property; board of directors; activities; audit; facilities.—**

(1) DEFINITIONS.—For the purposes of this section:

(a) “University direct-support organization” means an organization which is:

1. A Florida corporation not for profit incorporated under the provisions of chapter 617 and approved by the Department of State.

2. Organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university in Florida or for the benefit of a research and development park or research and development authority affiliated with a state university and organized under part V of chapter 159.

3. An organization that a state university board of trustees, after review, has certified to be operating in a manner consistent with the goals of the university and in the best interest of the state. Any organization that is denied certification by the board of trustees shall not use the name of the university that it serves.

(b) “Personal services” includes full-time or part-time personnel as well as payroll processing.

(c) “Property” does not include student fee revenues collected pursuant to s. [1009.24](#).

(2) USE OF PROPERTY.—

(a) Each state university board of trustees is authorized to permit the use of property, facilities, and personal services at any state university by any university direct-support organization, and, subject to the provisions of this section, direct-support organizations may establish accounts with the State Board of Administration for investment of funds pursuant to part IV of chapter 218.

(b) The board of trustees, in accordance with regulations and guidelines of the Board of Governors, shall prescribe by regulation conditions with which a university direct-support organization must comply in order to use property, facilities, or personal services at any state university, including that personal services must comply with s. [1012.976](#). Such regulations shall provide for budget and audit review and oversight by the board of trustees, including thresholds for approval of purchases, acquisitions, projects, and issuance of debt. No later than July 1, 2019, the transfer of a state appropriation by the board of trustees to any direct-support organization may only include funds pledged for capital projects. Beginning July 1, 2019, and annually thereafter, each university board of trustees shall report to the Legislature the amount of state appropriations transferred to any direct-support organization during the previous fiscal year, the purpose for which the funds were transferred, and the remaining balance of any funds transferred.

(c) The board of trustees may not transfer any funds to and shall not permit the use of property, facilities, or personal services at any state university by any university direct-support organization

that does not provide equal employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin.

(d) The board of trustees may not permit the use of state funds for travel expenses by any university direct-support organization.

(3) **BOARD OF DIRECTORS.**—The chair of the university board of trustees shall appoint at least one representative to the board of directors and the executive committee of any direct-support organization established under this section. The president of the university for which the direct-support organization is established, or his or her designee, shall also serve on the board of directors and the executive committee of any direct-support organization established to benefit that university. The university board of trustees shall approve all appointments to any direct-support organization not authorized by this subsection.

(4) **ACTIVITIES; RESTRICTION.**—A university direct-support organization is prohibited from giving, either directly or indirectly, any gift to a political committee as defined in s. [106.011](#) for any purpose.

(5) **ANNUAL AUDIT; PUBLIC RECORDS EXEMPTION; PUBLIC MEETINGS EXEMPTION.**—

(a) Each direct-support organization shall provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General pursuant to s. [11.45](#)(8) and by the university board of trustees. The annual audit report shall be submitted, within 9 months after the end of the fiscal year, to the Auditor General and the Board of Governors for review. The Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability shall have the authority to require and receive from the organization or from its independent auditor any records relative to the operation of the organization. The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report.

(b) Other than the auditor's report, management letter, any records related to the expenditure of state funds, and any financial records related to the expenditure of private funds for travel, all records of the organization and any supplemental data requested by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability shall be confidential and exempt from s. [119.07](#)(1).

(c) Any portion of a meeting of the board of directors of the organization, or of the executive committee or other committees of such board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed is exempt from s. [286.011](#) and s. 24(b), Art. I of the State Constitution.

(6) **FACILITIES.**—Each direct-support organization is authorized to enter into agreements to finance, design and construct, lease, lease-purchase, purchase, or operate facilities necessary and desirable to serve the needs and purposes of the university, as determined by the systemwide strategic plan adopted by the Board of Governors. Such agreements are subject to the provisions of ss. [1010.62](#) and [1013.171](#).

(7) **ANNUAL BUDGETS AND REPORTS.**—Each direct-support organization shall submit to the university president and the Board of Governors its federal Internal Revenue Service Application for Recognition of Exemption form (Form 1023) and its federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

**History.**—s. 172, ch. 2002-387; s. 173, ch. 2007-5; s. 89, ch. 2007-217; s. 31, ch. 2013-37; s. 1, ch. 2014-27; s. 7, ch. 2018-4; s. 1, ch. 2019-26.

## **9.011 University Direct Support Organizations and Health Services Support Organizations**

(1) University boards of trustees may establish direct support organizations (“DSO”) and health services support organizations and certify them to use university property, facilities and personal services. Such support organizations shall be organized and operated to serve the best interests or missions of the university, including a university’s research, education and service missions, and may receive, hold, invest, and administer property and make expenditures to or for the benefit of the university or for the benefit of a research and development park or research and development authority affiliated with a university.

(2) Each board of trustees shall establish by regulation conditions with which a support organization must comply in order to use university property, facilities, or personal services and such additional conditions, controls, and requirements for support organizations as each board deems appropriate to provide for budget and audit review and oversight. In addition, the regulation must include the following conditions:

- (a) The establishment of appropriate thresholds that delineate when approval by the board of trustees is required for the purchase of goods and services by a DSO.
- (b) All debt issued by a DSO is subject to the State University System Debt Management Guidelines and all public-private partnership transactions involving a DSO are subject to the State University System Public-Private Partnership Guidelines.
- (c) The establishment of appropriate thresholds that delineate when approval is required by the board of trustees for the acquisition of real property and the construction or renovation of facilities by a DSO.
- (d) University personal services used by a DSO are subject to the remuneration requirements set forth in section 1012.976, Florida Statutes.
- (e) A DSO is prohibited from using state funds for travel expenses incurred by the DSO.
- (f) A DSO is prohibited from giving, either directly, or indirectly, any gift to a political committee as defined in section 106.011, Florida Statutes, for any purpose.

(3) The Director or Chief Executive Officer of the support organization shall report to the University President or designee.

(4) Operating budgets of support organizations shall be prepared at least annually, and approved by the organization’s governing board and the university board of trustees. Significant changes in planned expenditures in the approved budget must be reported to the university board of trustees as soon as practicable but no later than the deadline established by a board of trustees.

(5) Support organizations shall provide for an annual audit conducted pursuant to university regulations or policies. The annual audit report shall be submitted to the university board of trustees for review. The audit report shall be submitted to the Board of Governors, and the Auditor General. The university board of trustees or designee, the Board of Governors, the Auditor General, and the Office of Program and Policy Analysis and Government Accountability may require and receive any records relative to the operation of a support organization from the organization or its independent auditors.

(6) Each support organization shall submit its federal Internal Revenue Service application for Recognition of Exemption form (Form 1023) and its federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990) to the university board of trustees or designee at the times required by the applicable regulation or policy of the board of trustees. Copies of such forms shall be provided by each university to the Board of Governors.

(7) As of July 1, 2019, any transfer of a state appropriation to a DSO is limited to funds pledged for capital projects.

- (a) This regulation does not prohibit the transfer of non-state funds between university DSOs, or the transfer of non-state funds to the DSO, as long as the original source of funding was not a state appropriation.
- (b) A DSO may transfer funds and provide the use of DSO property, facilities or personal services without any charge to the university.
- (c) Effective for fiscal 2018-2019, and annually thereafter, each university will report to the Legislature and the Board of Governors all transfers of state funds to each university DSO, using the format and instructions specified by the Chancellor.

(8) A support organization shall provide equal employment opportunities to all persons, regardless of race, color, national origin, sex, religion, age, disability, marital status, veteran status, or any other basis protected by law.

(9) The chair of the university board of trustees shall appoint at least one representative to each DSO board of directors and executive committee (if any). The university president or designee shall also serve on the board of directors and executive committee of each DSO. The university board of trustees shall approve all appointments to any DSO board other than the chair's representative(s) or the president or president's designee. The chair's designee may not be the university president; nor may the chair and president appoint the same person to represent both the chair and the president on any one DSO board.

(10) University boards of trustees shall decertify a support organization if the university board of trustees or designee determines that the organization is no longer serving the best interest or mission of the university and decertification is appropriate. In

decertifying a support organization, the board of trustees shall require an accounting of the organization's assets and liabilities and take such reasonable action as necessary to secure the return of all university property and facilities as requested by the university.

Authority: Section 7(d), Art. IX, Fla. Const., History – Formerly 6C-3.12, 11-18-70, Amended and Renumber 12-17-74, Amended 4-14-76, 6-25-80, 8-11-85, Formerly 6C-9.11, Amended 9-28-86, 2-13-89, 4-10-90, 12-9-91, 8-1-94, 4-16-96, Amended and Renumbered 8-6-09, Amended 11-8-18.

**Florida Polytechnic University  
Governance Committee  
Board of Trustees  
May 24, 2022**

**Subject: Slate of Officers for 2022-2024**

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**Proposed Committee Action**

Recommend to the Board of Trustees a slate nominating \_\_\_\_\_ for Board Chair and \_\_\_\_\_ Vice Chair for the term of August 1, 2022 through July 31, 2024.

**Background Information**

Pursuant to Section 4.2 of the Fourth Amended and Restated Bylaws of the Florida Polytechnic University Board of Trustees adopted September 11, 2019,

The Board shall elect the Chair and Vice-Chair from the appointed members of the Board at its last regular meeting prior to August 1 upon recommendation of the Governance Committee; the Chair and the Vice-Chair shall each serve for a two-year term to begin on August 1. The Chair and the Vice-Chair shall be eligible for reselection for one additional consecutive term by vote of the Board, after which they may not be an officer for two years before being eligible for selection again.

At the last Governance Committee meeting, the committee discussed potential nominees and needs to finalize its recommended slate.

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**Supporting Documentation:** None

**Prepared by:** Gina DeIulio, VP and General Counsel

**Florida Polytechnic University  
Governance Committee  
Board of Trustees  
May 24, 2022**

**Subject: Board of Trustees Training**

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**Proposed Committee Action**

Discussion only. No action required.

**Background Information**

According to the Committee's Work Plan, each year in the spring the Committee discusses topics for trustee training in the coming year. With feedback from several of our newer trustees, some topics to consider for future meetings include:

- Strategic partnerships
- Shared board governance for diversifying the student body
- Innovation for student success
- The Color of Money
- Metrics
- Board self-evaluation
- Academic tenure / evaluation of faculty
- The grant process in legislature
- Refresher on the Strategic Plan and Accountability Plan (so that we continue to view our role/decisions within that context)
- Refresher on the annual work plan for trustees (i.e., timing of key reviews/approvals/ submittals)
- The economic development role/impact and potential for the University (including opportunities and challenges)

Several of these items are refreshers of training that has already occurred either during new trustee orientation or at BOT meetings, while others are new topics to explore. The Committee is welcome to add other topics to this discussion.

Training can occur within committee meetings, at full Board workshops or meetings, or even during the annual retreat in November.

Board staff welcomes this Committee's recommendation on topics which can be integrated into the Board's schedule in the coming year.

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**Supporting Documentation:** N/A

**Prepared by:** Kristen J. Wharton, Assistant Secretary, University Board of Trustees