

ONEIDA NATION
GOVERNMENTAL 401(k) PLAN

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ONEIDA NATION GOVERNMENTAL 401(k) PLAN

PREAMBLE

Effective January 1, 1992, the Oneida Nation, a federally recognized Tribal government (the "Nation") established the Oneida Tribe of Indians of Wisconsin Profit Sharing Plan, now known as the "Oneida Nation Governmental 401(k) Plan" (the "Plan"). The Plan was initially designed as an employer profit sharing plan only, but was amended effective January 1, 1997 to include a Code Section 401(k) elective deferral arrangement. The Plan was amended on multiple occasions received its most recent favorable determination letter from the Internal Revenue Service on October 23, 2012. Effective April 1, 2011, the Plan was amended and restated in its entirety using a Transamerica Retirement Solutions Corporation Volume Submitter 401(k) Profit Sharing Plan. By this instrument, the Nation intends to amend and restate the Plan in its entirety by adopting this individually designed Plan document.

The Plan is intended to constitute a governmental plan within the meaning of Section 414(d) of the Code and Section 3(32) of the Act. The Plan is further intended to constitute a tax qualified plan under the provisions of Section 401(a) of the Code to the extent such provisions are made applicable to governmental plans.

ARTICLE I EFFECTIVE DATE

1.1. EFFECTIVE DATE.

The Plan was originally adopted effective as of January 1, 1992. Except as may otherwise be specifically provided with respect to particular provisions of the Plan, this amended and restated Plan shall be effective as of January 1, 2019.

ARTICLE II DEFINITIONS AND CONSTRUCTION

2.1. DEFINITIONS.

When a word or phrase shall appear in this Plan with the initial letter capitalized, and the word or phrase does not commence a sentence, the word or phrase shall generally be a term defined in this Section 2.1. The following words and phrases utilized in the Plan with the initial letter capitalized shall have the meanings set forth in this Section 2.1, unless a clearly different meaning is required by the context in which the word or phrase is used:

(a) "ACCOUNT" or "ACCOUNTS" - An account or accounts established pursuant to Section 6.1 to which are credited the Pre-Tax, Roth 401(k), Employer Profit Sharing, Employer Matching, Rollover, and Roth 401(k) Rollover Contributions made by or attributable to a Participant, along with any net gains and losses on such contributions.

(b) "ACT" - The Employee Retirement Income Security Act of 1974, as it may be amended from time to time.

(c) "ANNUAL ADDITION" - The sum of the amounts identified in subsections (1) through (3) below, with the exception of any amounts identified in subsection (4) below, shall constitute the Annual Addition allocable to a Participant under this Plan or under any defined contribution plan or defined benefit plan maintained by the Employer for a particular Plan Year:

(1) The Employer contributions allocable for a Plan Year to the Accounts of the Participant, including amounts deemed to be Employer contributions pursuant to a cash or deferred arrangement qualified under Section 401(k) of the Code (including the Pre-Tax Contributions and Roth 401(k) Contributions allocable to a Participant pursuant to this Plan); and amounts allocated to a medical account which must be treated as annual additions pursuant to Section 415(1)(1) or Section 419A(d)(2) of the Code;

(2) All nondeductible Employee contributions allocable during a Plan Year to the Accounts of the Participant; and

(3) Forfeitures allocable for a Plan Year to the Accounts of the Participant.

(4) Allocations of any of the following amounts shall not be included in the calculation of the Annual Addition, as set forth in Treasury Regulation Section 1.415(c)-1(b): a direct transfer from a tax-qualified plan to this Plan on behalf of a Participant; the restoration of a Participant's accrued benefit or repayment of a cashout (Employer and Employee repayments); Catch-Up Contributions made in accordance with Section 414(v) of the Code; restorative payments made as a correction of a fiduciary breach or potential fiduciary liability; excess elective contributions distributed in accordance with Section 4.8(b); Rollover Contributions and Roth 401(k) Rollover Contributions; and Participant loan repayments.

For purposes of this Section 2.1(c), Employer Contributions shall be considered Annual Additions for a particular Plan Year provided that such Contributions are actually deposited in the Trust no later than the 15th day of the tenth calendar month following the end of the Plan Year to which the Contributions relate. Nondeductible Employee contributions shall be considered Annual Additions for a particular Plan Year provided that such Contributions are actually deposited in the Trust no later than 30 days after the close of the Plan Year. Forfeiture allocations are treated as Annual Additions for the Plan Year which contains the date on which the forfeitures are allocated to Participant Accounts. All other special allocations, such as corrective contributions, allocations to simplified employee pensions under Section 408(k) and qualified military leave contributions made in accordance with Section 414(u) shall be taken into account in accordance with the timing rules of Treasury Regulation Section 1.415(c)-1(b)(6).

(d) "AUTHORIZED LEAVE OF ABSENCE" - A leave of absence granted by the Employer in writing in accordance with the Employer's uniformly applied rules regarding leaves of absence or a leave of absence for service as a member of the armed forces of the United States, provided that the Employee left the Employer directly to enter the armed services and returns to the employ of the Employer within the period during which his employment rights are protected by law.

(e) "AUTOMATIC CONTRIBUTIONS" - The Pre-Tax Contributions made by Participants who are automatically enrolled in the Plan in accordance with Section 3.2 and Section 4.1 of the Plan.

(f) "BENEFICIARY" - The person or persons entitled to receive benefits under this Plan in the event of death of the Participant.

(g) "BUSINESS COMMITTEE" - The Oneida Nation Business Committee, a publicly elected committee that has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council.

(h) "CATCH-UP CONTRIBUTIONS" - The elective deferral contributions directed by Participants in accordance with Internal Revenue Code Section 414(v) and Section 4.4 of the Plan. Catch-Up Contributions shall be treated as either Pre-Tax Contributions or Roth 401(k) Contributions and shall be accounted for within the Pre-Tax Contributions Account or the Roth 401(k) Contributions Account, as applicable.

(i) "CODE" - The Internal Revenue Code of 1986, as amended.

(j) "COMPENSATION" -

(1) General Rule. An Employee's Compensation for a Plan Year shall include all of the Employee's wages within the meaning of Section 3401(a) of the Code and all payments of compensation to the Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Sections 6041(d), 6051(a)(3) and 6502 of the Code, determined without regard to any rules under Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed.

(2) Elective Deferrals. The term "Compensation" shall include any elective deferral as defined in Code Section 402(g)(3), and any amounts which are contributed or deferred by the Employer at the election of the Employee and which are not currently includible in the Participant's gross taxable income by reason of the application of Sections 125 or 457 of the Code. For purposes of the definition of compensation, amounts excluded from taxable income under Code Section 125 include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code Section 125 only if the Employer does not request or collect information regarding the participant's other health coverage as part of the enrollment process for the health plan. Compensation paid or made available shall include elective amounts that are not includible in the gross income of the Employee by reason of Code Section 132(f)(4).

(3) Post-Severance Payments. The term "Compensation" shall include post-severance regular pay (including regular wages, overtime, payment for unused accrued leave and vacation, shift differential pay, commissions, bonuses, and other similar pay); provided, however, that such post-severance regular pay is paid to the Employee by the Employer by the later of two and one-half (2 ½) months after the Employee's severance from employment or the end of the calendar year that include the Employee's date of severance from employment. All other types of post-severance payments including, but not limited to payments

from nonqualified unfunded deferred compensation plans, and payments to former employees who are permanently and totally disabled, shall not be treated as Compensation.

(4) Military Differential Pay. The term "Compensation" shall include any differential pay paid by the Employer to the Participant during a period of Qualified Military Service.

(5) Contributions and Allocations. For purposes of determining the amount of contributions or allocations to be made pursuant to Articles IV, V and VI of the Plan, only Compensation paid by the Employer to an Employee during the Employee's period of participation in the Plan, including Qualified Military Service, shall be considered.

(6) Annual Compensation Limit. Notwithstanding any provision of the Plan to the contrary, the "Compensation" of each Employee taken into account under the Plan shall not exceed the "annual compensation limit." The "annual compensation limit" is Two Hundred Thousand Dollars (\$200,000.00) as adjusted by the Commissioner for increases in the cost-of-living in accordance with Section 401(a) (17) (B) of the Code (\$280,000 for the 2019 Plan Year). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding twelve (12) months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the "annual compensation limit" will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12). Any reference in this Plan to the limitation under Section 401(a)(17) of the Code shall mean the annual compensation limit set forth in this provision. If Compensation for any prior determination period is taken into account in determining an Employee's benefits accruing in the current Plan Year, the Compensation for that prior determination period is subject to the annual compensation limit in effect for that prior determination period.

(k) "DISABILITY" - The inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. The disability of a Participant shall be determined by a licensed physician. However, if the condition constitutes total disability under the federal Social Security Acts, the Plan Administrator may rely upon such determination that the Participant is Disabled for the purposes of this Plan. The determination shall be applied uniformly to all Participants.

(l) "EFFECTIVE DATE" - The date or dates set forth in Section 1.1.

(m) "EMPLOYEE" - Each person receiving remuneration, or who is entitled to remuneration, for services rendered to the Employer in the legal relationship of employer and employee and not in the relationship of an independent contractor (or who would be receiving or be entitled to remuneration were such person not on an Authorized Leave of Absence).

(n) "EMPLOYEE CONTRIBUTIONS" - The amounts contributed to the Trust Fund on behalf of a Participant as Pre-Tax Contributions and/or Roth 401(k) Contributions, including any Automatic Contributions and Catch-Up Contributions, if any, pursuant to Article IV.

(o) "EMPLOYER" - The Oneida Nation, a federally recognized Indian tribal government. The term "Employer" also shall include any governmental enterprise, unit, division, or operation of the Employer that adopts this Plan for the benefit of its Employees with the consent of the Business Committee; provided that only employers which are consistent with the treatment of this Plan as a governmental plan within the meaning of Code Section 414 and Section 3(32) of the Act shall be permitted to adopt this Plan. Each employer adopting this Plan shall be deemed to have delegated to the Business Committee all authority to amend or terminate the Plan and to appoint and remove the Plan Administrator and the Trustee.

(p) "EMPLOYER CONTRIBUTIONS" - The amounts contributed to the Trust Fund by the Employer as Employer Matching Contributions and Employer Profit Sharing Contributions, if any, pursuant to Article V.

(q) "EMPLOYER MATCHING CONTRIBUTIONS" - The amounts contributed to the Trust Fund by the Employer as Employer Matching Contributions, if any, pursuant to Section 5.1 in order to match a portion of the Employee Contributions of the Participants.

(r) "EMPLOYER MATCHING CONTRIBUTIONS ACCOUNT" - The Account established pursuant to Section 6.1 to which the Employer Matching Contributions are credited, and any net gains and losses on such contributions.

(s) "EMPLOYER PROFIT SHARING CONTRIBUTIONS" - The amounts contributed to the Trust Fund by the Employer as Employer Profit Sharing Contributions, if any, pursuant to Section 5.2.

(t) "EMPLOYER PROFIT SHARING CONTRIBUTIONS ACCOUNT" - The Account established pursuant to Section 6.1 to which the Employer Profit Sharing Contributions are credited, and any net gains and losses on such contributions.

(u) "HIGHLY COMPENSATED EMPLOYEE" - Each individual who is treated as a "Highly Compensated Employee" pursuant to Section 2.2 of this Plan and Section 414(q) of the Code.

(v) "HOUR OF SERVICE" -

(1) An hour for which an Employee is directly or indirectly compensated, or is entitled to compensation, by the Employer for the performance of duties. Such Hours of Service shall be credited to the respective computation period in which the duties were performed.

(2) An hour for which an Employee is directly or indirectly compensated, or is entitled to compensation, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence. No more than five hundred one (501) Hours of Service shall be credited under this subparagraph (2) for any single continuous period (whether or not such period occurs in a single computation period).

(3) An hour for which back pay (irrespective of mitigation of damages) is either awarded or agreed to by the Employer. The same Hours of Service shall not be credited both under subparagraph (1) or subparagraph (2) above, as the case may be, and under this subparagraph (3). Hours of Service attributable to back pay credits will be credited to the respective service computation period or periods to which the back pay pertains, rather than to the service computation period or periods in which the award, agreement, or payment is made.

(4) Employees shall also be credited with any additional Hours of Service required to be credited pursuant to any Federal law other than the Code which is applicable to the Employer.

(5) In lieu of determining Hours of Service under the foregoing subparagraphs (1), (2) and (3), the Plan Administrator may credit an Employee with ten (10) Hours of Service for each day for which any service must be credited, or forty-five (45) Hours of Service for each week for which any service must be credited, or ninety-five (95) Hours of Service for each bi-weekly payroll period for which any service must be credited, or one hundred ninety (190) Hours of Service for each month for which any service must be credited. Such crediting of hours shall be performed on a nondiscriminatory basis pursuant to the uniform policies and procedures of the Plan Administrator.

(w) "INVESTMENT FUNDS" - The investment funds, if any, established pursuant to Section 8.2.

(x) "NATION" - The Oneida Nation, a federally recognized Indian tribe, with recognized and inherent sovereign powers and immunity.

(y) "NORMAL RETIREMENT AGE" - The date on which a Participant attains the age of sixty-five (65) years.

(z) "PARTICIPANT" - An Employee who has satisfied the eligibility requirements specified in Section 3.1 and who has been automatically enrolled in the Plan in accordance with Section 3.2 or who has elected to participate pursuant to Section 3.3; provided, however, that all Employees who satisfy the eligibility requirements of Section 3.1 shall be considered Participants for purposes of Employer Profit Sharing Contributions, if any. If so indicated by the context, the term Participant shall also include former Participants whose active participation in the Plan has terminated but who have not received all amounts to which they are entitled pursuant to the terms and provisions of this Plan. Whether former Participants are allowed to exercise an option or election extended to "Participants" will be determined by the Plan Administrator in the exercise of its discretion, but in making such determinations the Plan Administrator shall act in a uniform, nondiscriminatory manner.

(aa) "PLAN" - The Oneida Nation Governmental 401(k) Plan, as set forth in this instrument, and as it may hereafter be amended.

(bb) "PLAN ADMINISTRATOR" - The individual, entity, or committee appointed to act as such pursuant to Section 12.2.

(cc) "PLAN YEAR" - A twelve (12) month period, commencing on each January 1 and ending on each following December 31.

(dd) "PRE-TAX CONTRIBUTIONS" - The elective deferral contributions directed by Participants on a pre-tax basis in accordance with Internal Revenue Code Section 401(k) and Sections 4.1 and 4.2 of the Plan.

(ee) "PRE-TAX CONTRIBUTIONS ACCOUNT" - The Account established pursuant to Section 6.1 to which a Participant's Pre-Tax Contributions, and earnings and losses thereto are credited.

(ff) "QUALIFIED DOMESTIC RELATIONS ORDER" - A domestic relations order meeting the requirements specified in Section 11.2.

(gg) "QUALIFIED MILITARY SERVICE" - Service in the uniformed services of the United States of America, as defined in Code Section 414(u)(5).

(hh) "ROLLOVER CONTRIBUTION" - The amounts transferred to the Trust Fund by Participants in accordance with Section 4.6.

(ii) "ROLLOVER CONTRIBUTION ACCOUNT" - A separate Account established pursuant to Section 6.1 to which are credited the Rollover Contributions of a Participant.

(jj) "ROTH 401(K) CONTRIBUTIONS" - The elective deferral contributions directed by Participants which are designated as Roth 401(k) Contributions in accordance with Internal Revenue Code Section 402A and Section 4.3 of the Plan.

(kk) "ROTH 401(K) ROLLOVER CONTRIBUTIONS" - The amounts transferred to the Trust Fund by Participants from a designated Roth 401(k) account or a Roth IRA in accordance with Section 4.6.

(ll) "TRUST AGREEMENT" - The agreement entered into between the Nation and the Trustees for the purpose of investing contributions hereunder.

(mm) "TRUST FUND" - The fund established by the Nation pursuant to the terms of the Trust Agreement to provide for the investment of contributions made pursuant to this Plan. The Trust Fund will be held, administered, and distributed for the exclusive benefit of the Participants and their Beneficiaries.

(nn) "TRUSTEES" - The individual, individuals, or entity appointed as such by the Nation. Trustees shall acknowledge acceptance of their appointment by the execution of the Trust Agreement or, in the case of a successor Trustee, by the execution of an appropriate written instrument. If the Nation appoints two or more individuals or entities to act jointly as a successor Trustee, the term "Trustee" shall refer collectively to all of said individuals or entities.

(oo) "VALUATION DATE" - The date for valuing the assets of the Trust Fund, which shall be each business day of the Plan Year.

(pp) "YEAR OF SERVICE" - Effective February 1, 2019, a Plan Year during which an Employee completes at least four hundred (400) Hours of Service for the Employer, regardless of whether the Employee is employed on the last day of said twelve (12) consecutive month period. For periods prior to February 1, 2019, a Year of Service is a Plan Year during which an Employee completes at least one thousand (1,000) Hours of Service for the Employer, regardless of whether the Employee is employed on the last day of said twelve (12) month period. The change in the required number of Hours of Service to earn a Year of Service effective February 1, 2019 shall not require a recalculation of any Years of Service earned or credited for Plan Years ending prior to February 1, 2019.

2.2. HIGHLY COMPENSATED EMPLOYEE.

(a) GENERAL. The term "Highly Compensated Employee" shall include all "highly compensated active employees" and all "highly compensated former employees."

(b) HIGHLY COMPENSATED ACTIVE EMPLOYEES. For purposes of this Plan, a "highly compensated active employee" is an Employee who performs services for the Employer during the current Plan Year (the "determination year") and who:

(1) During the determination year, or during the preceding Plan Year, is or was a "5% owner" as described in Section 416(l)(1) of the Code and applicable regulations thereunder; or

(2) For the preceding year, had Compensation from the Employer in excess of \$80,000, as adjusted from time to time by the Secretary of the Treasury for cost-of-living increases (\$120,000 for the 2018 lookback year (2019 Plan Year), and \$125,000 for the 2019 lookback year (2020 Plan Year)).

(c) HIGHLY COMPENSATED FORMER EMPLOYEES. For purposes of this Section, the term "highly compensated former employee" is based on the rules applicable to determining Highly Compensated Employee status as in effect for that determination year in accordance with Section 1.414(q)-1T, A-4 of the temporary income tax regulations and Notice 97-45, as such may be updated, modified, or amended from time to time.

2.3. CONSTRUCTION.

(a) GENERAL. The masculine gender, where appearing in the Plan, shall include the feminine gender (and vice versa), and the singular shall include the plural, unless the context clearly indicates to the contrary. The term "delivered to the Plan Administrator," as used in the Plan, shall include delivery to a person or persons designated by the Plan Administrator for the disbursement and receipt of administrative forms. Headings and subheadings are for the purpose of reference only and are not to be considered in the construction of this Plan. In the event of a conflict between this Plan document and the Trust Agreement, the provisions of this Plan document shall control.

(b) SAVINGS PROVISION. If any provision of this Plan is determined to be for any reason invalid or unenforceable, the remaining provisions shall continue in full force and effect.

2.4. GOVERNMENTAL PLAN.

This Plan is intended to constitute a governmental plan as defined in Section 414(d) of the Code and Section 3(32) of the Act. The Nation does not intend to waive any exemptions or relief provided to governmental plans under the Act or Code by its voluntary adoption of policies, procedures, or provisions otherwise not required by the Act or Code with respect to governmental plans. Rather, the Nation's voluntary adoption of any such policies, procedures, or provisions reflects its determination that such policies, procedures, or provisions are consistent with the Nation's desire to provide a secure source of retirement income for its Employees. It is also the intention of the Nation that the Plan shall constitute a qualified plan under the provisions of Section 401(a) of the Code and that the Trust Fund maintained pursuant to the Trust Agreement shall be exempt from taxation pursuant to Section 501(a) of the Code. This Plan shall be construed in a manner consistent with the intentions of the Nation.

2.5. GOVERNING LAW; JURISDICTION.

(a) SOVEREIGNTY. This Plan is sponsored by the Oneida Nation, a federally recognized Indian tribal government. To the extent that this Plan is treated as a separate "entity" of the Nation, it shall be treated as a subordinate entity of the Nation with all attributes of sovereignty. No provision of this Plan or its related Trust Agreement, including any reference to a federal or state statute, shall be deemed a waiver of sovereign immunity or a waiver of any exemption to which the Nation is entitled. Any waiver of the Nation's sovereign immunity may be made only in accordance with the Nation's Constitution. The Nation's exemptions and immunity, however, shall not extend to service providers for the Plan, which shall be held to full compliance standards and enforcement requirements as would be applicable if they were providing services to a private sector plan.

(b) GOVERNING LAW; JURISDICTION. All of the provisions of this Plan shall be construed and enforced according to the laws of the Oneida Nation and shall be administered according to the laws of the Nation, except as otherwise required by the Code or other applicable federal law. No judicial review of participant claims under this Plan shall be permitted except as provided in the claims procedures set forth in Section 12.4. Any judicial review related to this Plan shall be within the exclusive jurisdiction of the Oneida Judiciary or such other court of competent jurisdiction, as determined by the Business Committee in its discretion.

2.6. PENSION PROTECTION ACT COMPLIANCE.

Section 906 of the Pension Protection Act of 2006 (the "PPA") requires that the coverage of governmental plans maintained by Indian tribal governments and their entities, enterprises and divisions be limited to those "governmental" employees who are not engaged in "commercial" functions for the Tribal government. The Nation has determined, in accordance with its reasonable and good faith interpretation of Section 906 of the PPA, that all Employees covered by the Plan are engaged in essential governmental functions which are not commercial in nature. Pending guidance from the Internal Revenue Service and/or the Department of Labor, the Nation has taken into account the following factors when determining whether employment functions are commercial in nature:

- (a) the historic functions performed by Tribal governments;
- (b) the Nation's role as defined in its Constitution, Bylaws, Ordinances, Resolutions, Judicial decisions, customs, and traditions;
- (c) the functions carried on by other governmental employers, including the federal government, states, counties, cities, and other local governments;
- (d) the use of revenues generated by activities in question (whether inuring to the benefit of the Nation and the provision of public services, or whether inuring to private interests); and
- (e) whether the employing entity or division is treated as a non-profit or for-profit entity for tax or other purposes.

The Nation expressly reserves the right to modify or change the classification of any employee as required in accordance with final guidance published pursuant to Section 906 of the PPA. This Plan does not cover any employee groups classified by the Internal Revenue Service as "commercial" under IRS Notice 2006-89.

ARTICLE III **ELIGIBILITY AND PARTICIPATION**

3.1. ELIGIBILITY AND PARTICIPATION.

(a) **GENERAL RULE.** Except as set forth in paragraphs (c) and (d) below, all Employees of the Employer are eligible to participate in both the Employee Contributions and the Employer Contributions features of the Plan as of the date the eligibility requirements are met, as set forth in paragraph (b) below.

(b) **ELIGIBILITY REQUIREMENTS.**

(1) **MINIMUM AGE REQUIREMENT.** Each Employee must be at least eighteen (18) years of age to participate in the Plan.

(2) **SERVICE REQUIREMENTS.** Each Employee must complete three (3) months of continuous employment with the Employer to be eligible to participate in the Plan, with no particular number of hours required during that time period.

(c) **PARTIALLY ELIGIBLE CLASSES.** All Employees who participate in both the Oneida Nation Public Safety Office Pension Plan and in this Plan shall be eligible to participate only in the Employee Contributions feature of the Plan maintained pursuant to Article IV, and shall not be eligible to receive Employer Contributions pursuant to Article V.

(d) **NON-ELIGIBLE CLASSES.** The following individuals shall not be eligible to participate in the Plan: (1) Employees engaged in the performance of job functions determined by the Nation to be commercial in nature; (2) General Tribal Council members and individuals who serve as elected members of the Business Committee; (3) individuals who are

included in a unit of Employees covered by a collective bargaining agreement between employee representatives and the Employer, pursuant to which retirement benefits were the subject of good faith bargaining; and (4) nonresident aliens (within the meaning of Code Section 7701(b)(1)(B)) who receive no earned income (within the meaning of Code Section 911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code Section 861(a)(3)).

3.2. AUTOMATIC CONTRIBUTIONS.

(a) GENERAL RULE. Except as stated in paragraph (b) below, each Employee who is determined to be eligible in accordance with Sections 3.1(a) and (b), and each Employee who is subject to automatic re-enrollment pursuant to paragraph (d) below, shall be enrolled in the Plan automatically. Any Participant who is automatically enrolled in the Plan shall be deemed to have authorized pre-tax payroll deductions in the amount of the Automatic Contributions required pursuant to Section 4.1.

(b) EXCLUSIONS. The automatic enrollment feature set forth in this Section 3.2 shall not apply to Employees who make an "Affirmative Election" in accordance with the uniform and nondiscriminatory policies and procedures of the Plan Administrator. For purposes of this Section 3.2, an "Affirmative Election" shall include an election by any Employee covered by the automatic enrollment feature of the Plan to (1) not to make elective deferrals to the Plan, (2) to make Pre-Tax Contributions to the Plan in any amount in accordance with Section 4.2, or (3) to make Roth 401(k) Contributions to the Plan in any amount in accordance with Section 4.3. Additionally, any Employees who are eligible to participate in the Plan pursuant to Section 3.1(c) shall not be automatically enrolled in the Plan. Any Affirmative Election must be made prior to the date on which an eligible Employee is scheduled to be automatically enrolled in the Plan to avoid the automatic enrollment of such Employee. Any Affirmative Election made by an Employee after the date on which the Employee is automatically enrolled shall be treated as an opt out election and shall remove the Participant from the automatic enrollment provisions of the Plan.

(c) NOTICE TO ELIGIBLE EMPLOYEES. The Plan Administrator shall provide advance notice of the automatic enrollment feature of the Plan, including the ability to make Affirmative Elections, to each eligible Employee. The notice provided to eligible Employees shall explain all applicable timing and procedural requirements under the automatic enrollment feature. Such notice shall be prepared and distributed by the Plan Administrator, pursuant to its uniform and nondiscriminatory policies and procedures.

(d) AUTOMATIC RE-ENROLLMENT. Effective as of February 1, 2019, all Plan Participants who are actively employed by the Employer and who have elected to make Employee Contributions at a rate less than the automatic deferral rate set forth in Section 4.1 or who have elected not to make any Employee Contributions to the Plan shall be automatically re-enrolled in the elective deferral feature of the Plan. Any Participant who is automatically re-enrolled in the Plan shall be deemed to have authorized new or additional pre-tax payroll deductions sufficient to raise the Participant's total Employee Contribution rate to the Automatic Contribution rate set forth in Section 4.1. The automatic re-enrollment called for by this paragraph (d) is intended to be a one time re-enrollment and will not be administered on an ongoing or annual basis, absent an amendment to the Plan.

3.3. AFFIRMATIVE ELECTIONS; APPLICATION TO PARTICIPATE.

A Participant who elects to make Pre-Tax Contributions to the Plan in an amount other than the amount of the Automatic Contributions or who elects to make Roth 401(k) Contributions to the Plan in any amount (an Affirmative Election pursuant to Section 3.2(b)) shall do so in accordance with the policies and procedures of the Plan Administrator and shall authorize the reduction of the Participant's Compensation in an amount equal to his directed contributions.

3.4. ELECTION PROCEDURES.

All Participants who are automatically enrolled or voluntarily elect to participate in the Plan must adhere to the policies and procedures of the Plan Administrator for enrollment and election matters, such as the designation of beneficiaries. If a Participant fails to provide a valid beneficiary designation, his designation shall be made in accordance with Section 10.7, and if a Participant fails to make a valid investment direction, his Accounts shall be invested in the Plan's default investment option designated by the Plan Administrator, until investment directions are received from the Participant. All elections and designations to be delivered to the Plan Administrator pursuant to this Article Three must be received by the Plan Administrator within such reasonable and uniformly-applied time periods as the Plan Administrator may prescribe as a condition of giving effect to or implementing such instructions. If a Participant instruction cannot be given effect or implemented for a particular period, it shall be effective for the next succeeding period.

3.5. EFFECT OF REHIRING.

If an Employee separates from employment with the Employer and is later rehired, he shall remain credited with all periods of employment and Years of Service for eligibility and vesting purposes.

3.6. AUTHORIZED LEAVES OF ABSENCE.

A Participant's participation in the Plan shall not be terminated while the Participant is on an Authorized Leave of Absence.

3.7. SPECIAL SERVICE CREDITING RULES FOR QUALIFYING MILITARY SERVICE.

Notwithstanding anything herein to the contrary, contributions, benefits, and service credit with respect to military service shall be provided in accordance with Code Section 414(u).

3.8. TERMINATION OF PARTICIPATION.

A Participant's participation in the Plan, but not his right, if any, to payment of benefits, shall be terminated upon the Participant's separation from employment with the Employer or upon his transfer from an eligible class of Employees as provided in Section 3.9. A Participant's participation in the Plan shall not be terminated while he is on an Authorized Leave of Absence.

3.9. TRANSFERS TO AND FROM AN ELIGIBLE CLASS OF EMPLOYEES.

(a) TRANSFERS OUT OF PLAN. If a Participant's employment classification changes and, as a result of the change, he is no longer eligible to participate in the Plan, the Participant's ability to make contributions to the Plan and his status as an active Participant will cease as of the effective date of a change in his employment classification. All sums credited to the former Participant's Accounts will continue to be held pursuant to the terms of this Plan and will be distributed to the former Participant only upon his subsequent termination of employment or the occurrence of some other event permitting a distribution pursuant to the provisions of this Plan.

(b) TRANSFERS TO PLAN. If an Employee of the Employer is not eligible to participate in the Plan due to his employment classification, he shall be eligible to participate immediately upon becoming a member of an eligible class of Employees if he has satisfied the other requirements set forth in Section 3.1.

(c) SERVICE CREDIT. An Employee's service in an ineligible employment classification shall be considered in calculating the Employee's Years of Service for purposes of this Plan, provided that the Employee satisfies all other applicable requirements set forth in Section 3.1.

(d) TRANSFERS TO NON-PARTICIPATING TRIBAL ENTITIES. If a Participant ceases to participate in the Plan solely as a result of his transfer to an entity or enterprise of the Nation that has not adopted this Plan, amounts credited to his accounts as of the date of his transfer shall not be forfeited or distributed. Rather, such amounts shall be payable in accordance with the terms of this Plan upon his subsequent termination of employment with the Nation and all entities, enterprises, and divisions of the Nation or upon the occurrence of some other event permitting a distribution pursuant to the provisions of this Plan. While the Participant remains employed by an entity of the Nation, he shall be considered an Employee for purposes of eligibility for Participant in-service withdrawals, subject to all applicable administrative rules and procedures promulgated by the Plan Administrator.

(e) TRANSFER BETWEEN TRIBAL ENTERPRISES. If a Participant transfers employment between the Nation and/or different entities or enterprises of the Nation which have adopted the Plan, such Participant shall continue participating in the Plan as of the first payroll period (or as soon as reasonably practicable thereafter) commencing after the transfer; provided the new position is eligible for participation in the Plan. Contribution, Beneficiary designation, investment, and all other elections will remain in force after the transfer, subject to the Participant's right to change such elections, as determined in accordance with the uniform policies and procedures of the Plan Administrator.

(f) TRANSFER OF ELECTIONS BETWEEN PLANS. If a Participant transfers employment within the Nation and, as a result of such transfer, ceases participation in this Plan and becomes a Participant in the Nation's Enterprise 401(k) Plan, or vice versa, the Plan Administrator shall transfer the Participant's contribution, Beneficiary designation, investment and other elections to the Plan now covering the Participant, to the extent administratively feasible. The Participant shall be notified promptly of any transfer of elections and shall be provided with information regarding his ability to change any transferred elections.

3.10. LEASED EMPLOYEES.

A "leased employee" is any person (other than an employee of the Employer) who pursuant to an agreement between the Employer and any other person ("leasing organization") has performed services for the Employer (or for the Employer and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full-time basis for a period of at least one year, and such services are performed under the Employer's primary direction or control. A "leased employee" shall be treated as an Employee of the Employer for purposes of the pension requirements of Section 414(n)(3) of the Code, unless "leased employees" constitute less than twenty percent (20%) of the Employer's non-highly compensated work force (within the meaning of Section 414(n)(5)(C)(ii) of the Code) and the "leased employee" is covered by a "Safe Harbor Plan" that satisfies the requirements of Section 414(n)(5)(B) of the Code (a money purchase pension plan with nonintegrated employer contributions of at least 10% of compensation, with full vesting, and immediate participation for leased employees). In any event, a "leased employee" who is deemed to be an Employee of the Employer pursuant to the preceding sentence shall be treated as if he is employed in an employment classification that has not been designated for participation in the Plan.

ARTICLE IV

401(k) SAVINGS FEATURE

4.1. AUTOMATIC CONTRIBUTIONS.

(a) AUTOMATIC CONTRIBUTIONS. All Participants who are automatically enrolled in the Plan in accordance with Section 3.2 shall have Automatic Contributions deducted from their Compensation on a pre-tax basis and contributed by the Employer to the Trust Fund on their behalf. Automatic Contributions are determined on a payroll period basis and are not annualized or subject to a true-up requirement.

(b) AUTOMATIC CONTRIBUTION RATE. Employees who are determined to be eligible to participate in the Plan in accordance with Sections 3.1(a) and (b) and who are automatically enrolled in the Plan shall make Automatic Contributions on a pre-tax basis at the rate of four percent (4%) of the Participant's Compensation each payroll period. Participants who are actively employed by the Employer and subject to the automatic re-enrollment provision of Section 3.2(d) shall make Automatic Contributions on a pre-tax basis at the rate of four percent (4%) of the Participant's Compensation, reduced by the Participant's existing Pre-Tax and Roth 401(k) Contribution deferral rate(s), if any, for each payroll period.

(c) TRANSFER TO TRUSTEE. All Automatic Contributions shall be forwarded to the Trust fund as soon as the Employer reasonably can segregate the contributions from its general assets. Automatic Contributions shall be accounted for within the Plan and the Trust as Pre-Tax Contributions.

4.2. ELECTIVE DEFERRAL CONTRIBUTIONS.

(a) ELECTION. Each Participant may direct the Employer to make elective deferrals to the Trust Fund on the Participant's behalf during each Plan Year while he is a Participant. The amount payable to the Participant as his current Compensation shall then be

reduced by an amount equal to the elective deferral contributions directed by the Participant. Notwithstanding the foregoing, elective deferral contributions to the Trust Fund may be directed by a Participant only with respect to amounts which the Participant could otherwise elect to receive in cash and only with respect to amounts which are not currently available to the Participant at the time the Participant makes his or her election to defer. The contributions shall be made by means of payroll deduction and shall be made on a pre-tax basis in accordance with Code Section 401(k) ("Pre-Tax Contributions"), unless the Participant elects to treat the elective deferrals as Roth 401(k) Contributions in accordance with Section 4.3 below.

(b) TRANSFER TO TRUSTEE. All elective deferral contributions shall be forwarded to the Trustee or Investment Fund as soon as the Employer reasonably can segregate the contributions from its general assets.

4.3. ROTH 401(k) CONTRIBUTIONS.

(a) GENERAL. A Participant may direct the Employer to treat all or a portion of the Participant's elective deferral contributions as Roth 401(k) Contributions. A Roth 401(k) Contribution may be made with regard to an elective deferral which would be excludable from the Participant's gross income absent the Roth 401(k) Contribution designation and shall result in the elective deferral being included in the Participant's gross income in the taxable year of the designation. Roth 401(k) Contribution designations shall be made, on an irrevocable basis with regard to those particular Roth 401(k) Contributions, at the time the elective deferral contribution election is made with the Plan Administrator and shall be directed by the Participant in whole percentage increments or flat dollar amounts in accordance with the uniform and nondiscriminatory procedures of the Plan Administrator. Roth 401(k) Contribution designations also shall be available with regard to Catch-Up Contributions. The Roth 401(k) Contribution feature shall be administered in accordance with Code Section 402A and the Treasury Regulations promulgated thereunder.

(b) TAX TREATMENT OF DISTRIBUTIONS. The taxation of distributions and withdrawals of Roth 401(k) Contributions shall be determined in accordance with Code Section 402A. Generally, a distribution or withdrawal from a Roth 401(k) Contributions Account will be excluded from gross income only if the distribution or withdrawal (i) is made at least five (5) taxable years after the Participant first made Roth 401(k) Contributions to the Plan (or in the case of a Rollover Contribution, at least five (5) taxable years after the Roth 401(k) contribution was initially designated and made to the prior plan); and (ii) is made on or after the date the Participant attains age 59 ½, is made upon the death of the Participant or is attributable to the Participant's Disability.

4.4. CATCH-UP CONTRIBUTIONS.

All Participants who are eligible to participate in this Plan and who have attained age 50 before the end of the Participant's individual tax year shall be eligible to make Catch-Up Contributions in accordance with, and subject to the limitations of, Section 4.6 of the Plan and Section 414(v) of the Code. Any Catch-Up Contributions made by a Participant in a particular year shall be held and accounted for as either Pre-Tax Contributions or Roth 401(k) Contributions, as determined by the Plan Administrator in accordance with the contribution designations made by the Participant.

4.5. DESIGNATION, CHANGE AND SUSPENSION OF ELECTIVE DEFERRALS.

All designations or changes of designation of the amount of a Participant's elective deferrals to the Plan, including the suspension and reinstatement of elective deferrals, shall be processed no more frequently than on a payroll period basis, in accordance with the uniform policies and procedures of the Plan Administrator. Any change in the designation of elective deferrals with sufficient advance notice shall become effective as of the beginning of the next payroll period. If a change request is not submitted with sufficient advance notice or otherwise cannot be implemented as of any the beginning of a payroll period, it shall become effective as of the next succeeding payroll period thereafter. A contribution designation shall be effective until it is succeeded by another valid contribution designation or until the Participant's right to make elective deferrals to the Plan is otherwise suspended or terminated. While a Participant is on an unpaid Authorized Leave of Absence, he shall be deemed to have suspended his elective deferrals and shall recommence such contributions following his return to active employment in accordance with the uniform rules and procedures of the Plan Administrator. A Participant shall not be entitled to "make-up" suspended contributions.

4.6. ROLLOVER CONTRIBUTIONS.

(a) CONTRIBUTION. Any Employee who has received a distribution from a profit sharing plan, stock bonus plan, or pension plan intended to "qualify" under Section 401 of the Code may transfer such distribution to the Trust Fund if such contribution to the Trust Fund would constitute, in the sole and absolute discretion of the Plan Administrator, a "rollover contribution" within the meaning of the applicable provisions of the Code. Additionally, an Employee may request that the Plan Administrator direct the Trustee to accept a rollover contribution (by means of a direct rollover or an indirect rollover) of a distribution made after December 31, 2001, from (1) a qualified plan described in Section 401(a) or 403(a) of the Code; (2) an annuity contract described in Section 403(b) of the Code; (3) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or (4) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code. Notwithstanding the foregoing, no Rollover Contribution to the Plan shall consist of or include after-tax employee contributions. Additionally, an Employee may request that the Plan Administrator direct the Trustee to accept a transfer from the trustee of another qualified plan. The Plan Administrator may, in its sole discretion, decline to accept a rollover contribution or a transfer. Upon receipt of such approval from the Plan Administrator, the Trustee shall accept such transfer. For purposes of this Plan, both a "rollover contribution" within the meaning of the applicable provisions of the Code and a transfer initiated by the Employee from another plan shall be referred to as a "Rollover Contribution." If the Plan Administrator decides to grant a Participant's request to make a Rollover Contribution, the Employee may contribute to the Trust Fund cash to the extent of such distribution. An Employee may request to make a Rollover Contribution to his Roth 401(k) Rollover Contribution Account hereunder provided that the Employee is eligible to receive a direct rollover from another Roth 401(k) account created under a tax-qualified retirement plan described in Code Section 408A(e) and only to the extent the proposed Rollover Contribution is permitted under Code Section 402(c).

(b) PROHIBITION OF TRANSFERS FROM CERTAIN PLANS. The Plan Administrator may decline to accept direct transfers to this Plan (as distinguished from a

"rollover contribution" within the meaning of the Code) if the plan from which the transfer is to be made is or was subject to the joint and survivor annuity and pre-retirement survivor requirements of Section 417 of the Code by reason of Section 401(a)(11) of the Code.

4.7. SPECIAL CONTRIBUTION RULES FOR QUALIFIED MILITARY SERVICE.

(a) **GENERAL.** Notwithstanding anything herein to the contrary, Participants who leave employment for Qualified Military Service and who are reemployed pursuant to the requirements of Code Section 414(u), shall be permitted to make special make up Pre-Tax Contributions, Roth 401(k) Contributions, and Catch-Up Contributions to the Plan in an amount up to the "maximum make up amount;" provided that any such contributions are made within the shorter of the two (2) following periods:

(1) the period beginning on the Participant's date of reemployment and ending on the date which is three (3) times the period of the qualifying military service; or

(2) the period beginning on the Participant's date of reemployment and ending on the fifth-year anniversary of such date.

(b) **SPECIAL DEFINITIONS.** For purposes of this Section 4.7 only, the specified terms shall have the following meanings:

(1) "Compensation" for this purpose shall mean the Compensation the Participant would have received during his period of Qualified Military Service had he remained employed by the Employer during that period, based on the rate of pay the Participant would have received but for absence during the period of qualifying military service; provided, however, that if the compensation the Participant would have received during such period was not reasonably certain, compensation for purposes of this Section shall mean the Participant's average Compensation during the twelve (12) month period immediately preceding the Qualified Military Service (or, if shorter, the period of employment immediately preceding the Qualified Military Service).

(2) "Maximum make up amount" shall be calculated by taking into account the maximum amount of elective deferrals that the Participant would have been permitted to make under the Plan's normal contribution rules and limitations as set forth herein, for the period of Qualified Military Service as if the Participant had continued to be employed by the Employer during such period and received compensation as described herein. No such contributions may exceed the amount the individual would have been permitted or required to contribute had the individual remained continuously employed by the Employer during the period of Qualified Military Service.

(c) **LIMITATIONS.** Neither the provisions of this Section 4.7 nor any other Qualified Military Service provisions set forth in this Plan shall be construed in a manner which requires the allocation of earnings on any make up contributions attributable to Qualified Military Service or the allocation of forfeitures with respect to any period of Qualified Military Service.

4.8. ELECTIVE DEFERRALS - IRS DOLLAR LIMITATIONS.

(a) 402(g) DOLLAR LIMITATIONS. Elective deferral contributions for a Participant in any calendar year may not exceed the limitation set forth in Code Section 402(g), as adjusted (\$19,000.00 for 2019). This limitation applies in the aggregate to the Participant's elective deferral contributions under all plans. For this purpose, the term elective deferral contributions includes Pre-Tax Contributions, Roth 401(k) Contributions, the Participant's pre-tax contributions to any other qualified cash or deferred arrangement (as defined in Section 401(k) of the Code), any elective employer contributions to a simplified employee pension plan that are not included in the Participant's gross income due to Section 402(h)(1)(B) of the Code and any employer contribution used to purchase an annuity contract under Section 403(b) of the Code pursuant to a salary reduction arrangement (within the meaning of Section 3121(a)(5)(D) of the Code). Elective deferral contributions for this purpose do not include Catch-Up Contributions made pursuant to Code Section 414(v) and Section 4.4 of the Plan.

(b) 414(v) DOLLAR LIMITATIONS. Catch-Up Contributions for a Participant in any calendar year may not exceed the limitation set forth in Code Section 414(v), as adjusted (\$6,000.00 for 2019). This limitation applies in the aggregate to the Participant's Catch-Up Contributions under this Plan and all other tax-qualified retirement plans. Catch-Up Contributions under this Plan are held and accounted for as Pre-Tax Contributions or Roth 401(k) Contributions, and the Code Section 402(g) limitation and the Code Section 414(v) limitation shall be aggregated for Participants eligible to make Catch-Up Contributions in a particular tax year (\$25,000.00 for the 2019 tax year, subject to future annual adjustments).

(c) CORRECTIONS. In the event that the Participant's elective deferral contributions to all such programs during any calendar year exceed the limitation (as adjusted for Catch-Up Contributions, if applicable) for that calendar year, the Participant may, by March 1 of the calendar year following the calendar year for which the excess deferral contributions were made, so advise the Plan Administrator and request the return of all or a portion of the excess deferral contributions to this Plan. A Plan Participant shall automatically be deemed to have so advised the Plan Administrator and to have requested the return of any excess deferral contributions that arise solely by taking into account the Participant's Pre-Tax Contributions and Roth 401(k) Contributions to this Plan or any other plans sponsored by the Employer. The excess deferral contributions, along with any income thereon, shall then be returned to the Participant by the next following April 15. Notwithstanding the foregoing, the earnings distributable with regard to any excess contributions determined pursuant to this Section 4.8(c) shall not include the income or loss allocable to such excess contributions for the period beginning on the last day of the calendar year and ending on the date of the corrective distribution. Excess elective contributions shall be treated as Annual Additions pursuant to this Plan, unless such amounts are distributed no later than the next following April 15.

(d) ADJUSTMENT OF MATCHING CONTRIBUTIONS. In the event that a distribution of excess elective deferral contributions is made pursuant to paragraph (c), the Employer Matching Contributions Account, if any, will be adjusted by the amount of any Employer Matching Contribution attributable to such excess elective deferral contributions (the "excess matching contribution") plus the income allocable to any such excess matching contribution. The income allocable to the excess matching contribution shall be determined by the Plan Administrator in accordance with any method permitted under Treasury Regulation

Sections 1.401(m)-1(e)(3) or 1.401(k)-1(f)(4) as applicable. Any such excess Employer Matching Contributions (and earnings allocable thereto) will be forfeited and reallocated pursuant to the uniform and nondiscriminatory policies and procedures of the Plan Administrator.

ARTICLE V **EMPLOYER CONTRIBUTIONS**

5.1. EMPLOYER MATCHING CONTRIBUTIONS.

(a) **GENERAL RULE.** The Employer may, in its discretion and by action of the Business Committee, make Employer Matching Contributions to the Plan on behalf of each Participant who makes Pre-Tax Contributions (including Automatic Contributions) pursuant to Sections 4.1 and 4.2 and/or Roth 401(k) Contributions pursuant to Section 4.3. The Employer may, in its discretion and by action of the Business Committee, modify, reduce, or eliminate Employer Matching Contributions at any time on a prospective basis.

(b) **CURRENT CONTRIBUTION RATE.** As of the Effective Date, Employer Matching Contributions have been declared at the rate of one hundred percent (100%), or dollar for dollar, on the first four percent (4%) of Compensation that a Participant defers into the Plan as Pre-Tax Contributions or Roth 401(k) Contributions.

(c) **MATCHING CONTRIBUTION CALCULATIONS.** Employer Matching Contributions shall be calculated on a payroll period basis. Employer Matching Contributions shall be paid to the Plan only with respect to payroll periods during which the Participant makes Pre-Tax or Roth 401(k) Contributions to the Plan.

5.2. EMPLOYER PROFIT SHARING CONTRIBUTIONS.

The Employer may, in its discretion make Employer Profit Sharing Contributions to the Plan on behalf of eligible Participants. Employer Profit Sharing Contributions, if any, shall be declared by the Business Committee for each Plan Year for which they are to be paid, and shall be allocated to eligible Participants based on a uniform percentage of each such Participant's Compensation. The Employer may, by action of the Business Committee, reduce, or eliminate Employer Discretionary Contributions prospectively at any time during a Plan Year or with regard to a future Plan Year.

5.3. CORRECTIVE CONTRIBUTIONS.

(a) **TRUE UP.** In the event that the Plan Administrator determines a Participant did not receive the appropriate Employer Matching Contributions or Employer Profit Sharing Contributions, if any, for the Plan Year based on the current Employer Contribution formula(s), the Plan Administrator shall cause the Employer to make a true up contribution on behalf of any affected Participant, which shall be allocated in accordance with the uniform and nondiscriminatory policies of the Plan Administrator. The provisions of this Section 5.3(a) are intended to authorize corrective allocations when necessary, as determined by the Plan Administrator, and are not intended to impose or create an annual reconciliation requirement.

(b) CORRECTIVE CONTRIBUTIONS. Notwithstanding anything herein to the contrary, but subject to all applicable limitations of the Code, the Employer may make additional contributions to the Plan as needed to correct any errors in administration which may occur from time to time. Such corrective contributions shall be limited to the extent necessary (including earnings as applicable) to place affected Participants in the position they would have been in but for such error or errors and shall be allocated to the Account or Accounts in which the error was made, subject to all rules and procedures otherwise applicable to such Accounts.

5.4. SPECIAL CONTRIBUTIONS FOR QUALIFIED MILITARY SERVICE.

Notwithstanding anything herein to the contrary, contributions, benefits, and service credit with respect to Qualified Military Service shall be provided in accordance with Section 414(u) of the Code. In this regard, the Employer shall contribute Employer Discretionary Contributions on behalf of such reemployed Participants in an amount equal to the amount of Employer Discretionary Contributions, if any, which would have been allocated to the Participant's Accounts during the period of Qualified Military Service had he remained continuously employed by the Employer throughout the period of Qualified Military Service, if any. The Employer also shall contribute Employer Matching Contributions to the Plan on behalf of a Participant who makes up Employee Contributions pursuant to Sections 4.1, 4.2 and/or 4.3. The amount of the Employer Matching Contributions shall be equal to the amount of Employer Matching Contributions which would have been due under this Plan had the Employee Contributions been made during the period of Qualified Military Service, if any. The foregoing shall not be construed to expand the Employer's contribution obligations beyond those required in order to comply with Code Section 414(u).

5.5. TIME OF PAYMENT.

Employer Matching Contributions and Employer Profit Sharing Contributions, if any, shall be paid to the Trust Fund as of each payroll period in any Plan Year for which they are declared, subject to the Employer's ability to modify the timing of its deposits and subject to a reasonable allowance for administrative processing. In no event shall Employer Contributions be paid later than the date by which the Employer's federal information return for the Plan (Form 5500) would be filed, including any extensions of such date, if the Employer was required to file such return.

5.6. CONDITIONAL NATURE OF CONTRIBUTIONS.

(a) MISTAKE OF FACT. Any contribution made to the Trust Fund by the Employer because of a mistake of fact shall be returned to the Employer upon its request within one (1) year of the date of the contribution.

(b) LIMITATIONS ON AMOUNTS RETURNED. Notwithstanding anything herein to the contrary, the maximum amount that may be returned to the Employer pursuant to subsections (a) or (b) above is limited to the portion of such contribution attributable to the mistake of fact or the portion of such contribution deemed non-deductible (the "excess contribution"). Earnings attributable to the excess contribution will not be returned to the Employer, but losses attributable thereto will reduce the amount so returned. In no case shall

withdrawal of any excess contribution pursuant to Sections (a) or (b) above reduce the balance of the Participant's Account to less than the balance would have been had the excess contribution not been made.

ARTICLE VI **ACCOUNTING**

6.1. SEPARATE ACCOUNTS.

A separate Pre-Tax Contributions Account, Roth 401(k) Contributions Account, Rollover Contributions Account, Roth 401(k) Rollover Contributions Account, Employer Matching Contributions Account, and Employer Profit Sharing Contributions Account, as appropriate, will be maintained for each Participant in the Plan. Automatic Contributions made by a Participant to the Plan shall be accounted for as Pre-Tax Contributions. Any Catch-Up Contributions made by a Participant shall be credited to the Pre-Tax Contributions Account or Roth 401(k) Contributions Account maintained for such Participant in accordance with the elections of the Participant. Each such Account shall be adjusted as hereinafter provided to reflect any withdrawals and distributions and the appreciation or depreciation in the value of the assets of the Trust Fund. The establishment and maintenance of separate Accounts shall not be construed as giving any person any interest in any specific asset of the Trust Fund which, for investment purposes, shall be administered as a single fund unless and until otherwise directed by the Plan Administrator or otherwise provided herein.

6.2. ALLOCATION OF CONTRIBUTIONS.

(a) **PRE-TAX CONTRIBUTIONS.** The Pre-Tax Contributions of a Participant, including any Automatic Contributions, will be allocated to his Pre-Tax Contributions Account at the rate elected by the Participant pursuant to Article IV. The allocation of Pre-Tax Contributions shall be made as of a uniform date selected by the Plan Administrator, which shall not be later than the last day of the month following the month in which the contribution payroll period ends.

(b) **ROTH 401(K) CONTRIBUTIONS.** The elective deferral contributions of a Participant which are designated as Roth 401(k) Contributions in accordance with Section 4.3, if any, will be allocated to his Roth 401(k) Contributions Account, at the rate elected by the Participant pursuant to Article IV. The allocation of Roth 401(k) Contributions shall be made as of a uniform date selected by the Plan Administrator, which shall be not later than the last day of the month following the end of the payroll period with respect to which said contributions were made.

(c) **CATCH-UP CONTRIBUTIONS.** The elective deferral contributions of a Participant which constitute Catch-Up Contributions, if any, will be allocated to the Participant's Pre-Tax Contributions Account unless the Participant designates the Catch-Up Contributions as Roth 401(k) Contributions in accordance with Section 4.2. The allocation of Catch-Up Contributions shall be made as of a uniform date selected by the Plan Administrator, which shall be not later than the last day of the month following the end of the payroll period with respect to which said contributions were made.

(d) EMPLOYER MATCHING CONTRIBUTIONS. The Employer Matching Contributions made on behalf of a Participant for a Plan Year shall be allocated to his Employer Matching Contributions Account in accordance with the timing set forth in Section 5.5. Subject to uniform matching limitations as may be established by the Business Committee from time to time, Employer Matching Contributions shall be allocated in accordance with Section 5.1.

(e) EMPLOYER PROFIT SHARING CONTRIBUTIONS. The Employer Profit Sharing Contributions made on behalf of an eligible Participant for a Plan Year, if any, shall be allocated to his or her Employer Profit Sharing Contributions Account in accordance with the timing set forth in Section 5.5. Employer Profit Sharing Contributions shall be allocated to a Participant who is employed with the Employer on the last day of the Plan Year and completes a Year of Service during the Plan Year. Any Employer Profit Sharing Contributions shall be allocated based on Compensation earned during periods of Plan participation only. The aforementioned allocation restrictions shall not apply to a Participant who separates from employment due to death or Disability, or who separates after the Normal Retirement Age. The Employer, in its discretion, may reduce, change, or impose additional allocation restrictions on eligibility for Employer Profit Sharing Contributions at the time such contributions are declared.

(f) ROLLOVER CONTRIBUTIONS. The Rollover Contributions of a Participant shall be credited to his Rollover Contributions Account.

(g) ROTH 401(K) ROLLOVER CONTRIBUTIONS. The Roth 401(k) Rollover Contributions of an Employee shall be credited to his Roth 401(k) Rollover Contributions Account.

(h) FORFEITURES. Any forfeitures accumulated under the Plan as of the last day of a Plan Year shall be used to pay Plan expenses or reduce the Employer's contribution obligation in the next succeeding Plan Year. In no event shall the Employer or the Plan Administrator cause forfeitures to be allocated to any Roth 401(k) Contributions Accounts, through amendment, administrative procedure or otherwise.

(i) DISTRIBUTIONS AND WITHDRAWALS. All distributions and withdrawals made on behalf of or by a Participant shall be deducted from the Participant's Account from which the distribution or withdrawal, as of a uniform date selected by the Plan Administrator.

(j) ALLOCATION OF PLAN EXPENSES. All Plan expenses paid out of the Plan pursuant to Section 12.6 shall be allocated in accordance with the uniform and nondiscriminatory policies of the Plan Administrator. The Plan Administrator may determine, in its discretion, to allocate Plan expenses to all current and former Participants of the Plan, to a particular class of Participants (such as former Participants), or to charge the Account of a particular affected Participant; provided, however, that such allocations are reasonable and that any allocation to former Participants does not impose a significant detriment on the former Participant's right to leave his Account balance in the Plan. All expenses which are allocated among Participant Accounts shall be allocated as of the last day of the Plan Year during which such expenses were paid and shall be allocated either on a pro rata or per capita basis, as determined by the Plan Administrator in its discretion. No expenses shall be allocated to a

Participant if the Participant's Accounts are valued at zero as of the date on which expenses are allocated.

6.3. VALUATION AND ACCOUNT ADJUSTMENTS.

(a) GENERAL ALLOCATION RULE. The assets of each Investment Fund will be valued, and the investment gains and losses will be allocated to the Accounts maintained on behalf of each Participant, as of each Valuation Date in accordance with the standard procedures established and maintained by the asset custodian and record keeper.

(b) FORMER PARTICIPANTS. For purposes of this Section 6.3, any individual who has an Account balance in the Plan (including current Plan Participants, former Participants who have not yet received all amounts to which they are entitled, surviving spouses of deceased Participants and Beneficiaries) shall be considered to be a "Participant."

(c) INVESTMENT DIRECTIONS. Notwithstanding anything to the contrary in this Section 6.3, if a Participant's Accounts or any portion thereof are subject to directed investment pursuant to Section 8.2, amounts subject to directed investment shall be adjusted separately to reflect gains or losses attributable strictly to such directed investments.

6.4. LIMITATIONS ON ANNUAL ADDITIONS.

(a) GENERAL RULE. Notwithstanding anything in this Plan to the contrary, the Annual Addition to be allocated to the Accounts of a Participant for any Plan Year shall not exceed an amount equal to the lesser of (1) \$40,000, as adjusted for increases in the cost-of-living under Section 415(d) of the Code (\$56,000 for the 2019 Plan Year), or (2) 100 percent of the Participant's Compensation, within the meaning of Section 415(c)(3) of the Code, for the limitation year.

(b) MULTIPLE DEFINED CONTRIBUTION PLANS. The limitations of this Section with respect to any Participant who is at any time participating in any other "defined contribution plan," as defined in Section 414(i) of the Code, maintained by the Nation shall apply as if the total Annual Additions under all defined contribution plans in which the Participant is participating were allocated under this Plan.

(c) ADJUSTING ANNUAL ADDITIONS. If the limitations of Section (a) are exceeded, adjustments shall first be made to the annual additions under any other defined contribution plan of the Nation, if permitted by such plan. Any adjustments to Annual Additions under this Plan are required in accordance with this Section, such adjustments shall be made in accordance with the rules for adjusting excess amounts under the Internal Revenue Service's then current version of the Employee Plans Compliance Resolutions System.

(d) CODE AND TREASURY REGULATIONS. The limitations of Code Section 415 and the Treasury Regulations promulgated thereunder are incorporated into the terms of the Plan by this reference and the Plan shall be operated in compliance with such limitations. The provisions of Code Section 415 and the related Treasury Regulations shall control in the event of any conflict with the Section 2.1(c) of the Plan (definition of "Annual Addition"), this Section 6.4 or any other terms of this Plan document.

ARTICLE VII
VESTING

7.1. FULL VESTING.

(a) VESTING IN EMPLOYEE CONTRIBUTIONS ACCOUNTS. Each Participant shall at all times be fully vested in all amounts credited to or allocable to his Employee Contributions Accounts, if any, and his rights and interest therein shall not be forfeitable for any reason.

(b) VESTING IN THE EMPLOYER CONTRIBUTIONS ACCOUNTS. Each Participant shall be fully vested in the amounts credited to or allocable to his Employer Contributions Accounts on and after the first to occur of the following events:

- (1) Attainment by the Participant of his Normal Retirement Age while employed by the Employer;
- (2) The date of separation from employment due to Disability, as determined by the Plan Administrator;
- (3) The date of separation from employment due to the death of the Participant;
- (4) Termination of the Plan;
- (5) Complete discontinuance of Employer Contributions; or
- (6) The completion of six (6) Years of Service.

7.2. DETERMINATION OF VESTED INTEREST IN EMPLOYER CONTRIBUTIONS ACCOUNTS IN THE EVENT OF SEPARATION FROM EMPLOYMENT.

(a) VESTING SCHEDULE FOR EMPLOYER CONTRIBUTIONS ACCOUNTS. If a Participant separates from employment with the Employer at a time when the Participant is not fully vested in the amounts credited to or allocable to his Employer Matching Contributions Accounts, the Participant's vested interest in his Employer Matching Contributions Accounts shall be determined in accordance with the schedule set forth below.

<u>Years of Service</u>	<u>Vested Percentage of Employer Contributions Account</u>
Less than two	0%
At least two, less than three	20%
At least three, less than four	40%
At least four, less than five	60%
At least five, less than six	80%
Six or more	100%

(b) TIME OF DETERMINATION. A Participant's vested interest shall be determined as of the date on which the Participant's employment terminates. If a Participant is less than 100% vested in his Employer Contributions Accounts when his employment terminates, any non-vested amounts credited to his Employer Contributions Accounts shall be immediately forfeited as of the date of termination. Notwithstanding the foregoing, if the Participant has no vested interest in the Plan as of the date of termination of employment (including Pre-Tax, Roth 401(k), Rollover, and Roth 401(k) Rollover Contributions), the Participant shall be deemed to have received a distribution from the Plan on the date of termination and any nonvested amounts allocated to the Participant's Employer Contributions accounts shall be subject to immediate forfeiture.

(c) USE OF FORFEITURES. Amounts forfeited under the preceding rule shall be allocated in accordance with Section 6.2(h).

7.3. SPECIAL VESTING RULE FOR DEATH DURING QUALIFIED MILITARY SERVICE.

In accordance with Code Section 401(a)(37), any Participant who dies while performing Qualified Military Service shall be treated as if he died while actively employed by the Employer for purposes of determining his vested interest.

7.4. AMENDMENTS TO VESTING SCHEDULE.

Notwithstanding any provision of the Plan to the contrary, no amendments to or other changes in the vesting schedules set forth in this Article VII shall deprive an Employee who is a Participant on the later of (a) the date the amendment is adopted or (b) the date the amendment is effective of any nonforfeitable benefit to which he is entitled under the Plan (determined as of such date) without regard to such amendment.

ARTICLE VIII
PARTICIPANT DIRECTED INDIVIDUAL ACCOUNTS

8.1. PARTICIPANT DIRECTED INDIVIDUAL ACCOUNT PLAN.

This Plan is intended to constitute a participant directed individual account plan and shall be administered, on a voluntary basis, in accordance with the principles of Section 404(c) of the Act. As such, Participants shall be provided the opportunity to exercise control over some or all of the assets in their Accounts under the Plan and to choose from a broad range of investment alternatives. The Plan Administrator may adopt participant direction procedures, setting forth nondiscriminatory and uniform policies and procedures governing Participant direction of investments under the Plan.

8.2. AVAILABILITY OF INVESTMENT ALTERNATIVES.

The Plan Administrator, pursuant to uniform and nondiscriminatory rules, shall establish three (3) or more Investment Funds in accordance with the terms and provisions of this Article VIII. In establishing Investment Funds, the Plan Administrator shall select investment alternatives which provide each Participant with a broad range of investment

alternatives. The Plan Administrator also shall designate one or more of the Plan's Investment Funds as the Plan's default Investment Fund to be utilized in accordance with Section 8.7.

8.3. EXERCISE OF CONTROL.

(a) **INVESTMENT DIRECTION.** Each Participant may direct that all of the amounts attributable to his Accounts or to an Account shall be invested in a single Investment Fund or may direct fractional (percentage) increments of his Accounts to be invested in such fund or funds as he shall desire in accordance with uniform procedures promulgated by the Plan Administrator. Each Participant, in accordance with such rules, may change his investment directions to provide for the investment of existing Account balances or future contributions among the various Investment Funds in such increments, or all to any one (1) of them, as the Participant shall elect on a form provided by the Plan Administrator, signed by the Participant, and delivered to the Plan Administrator. The Plan Administrator shall provide Participants the opportunity to receive written confirmation of any such investment direction. The Trustee and Plan Administrator shall be obligated to comply with such instruction except as provided in Section (d) below. The Plan Administrator shall promulgate uniform and nondiscriminatory rules constituting the investment direction policy under the Plan which shall be communicated to Participants regarding:

(1) The frequency of change of investment direction of current Account balances among Investment Funds;

(2) The frequency of change of investment direction of future contributions among Investment Funds;

(3) The effective dates of instructions regarding investment directions and changes of investment directions;

(4) The fractional (percentage) limitations, if any, in which current Account balances may be invested and/or transferred between Investment Funds;

(5) The fractional (percentage) limitations, if any, in which future contributions are to be invested between Investment Funds; and

(6) The periods within which direction must be given if it is to be effective for a particular period.

Procedures with regard to any one (1) or more Investment Funds may vary to reflect the variable or contrasting characteristics of a particular investment alternative, provided that Participants are given the opportunity to give investment instructions with respect to each investment alternative available under the Plan with a frequency which is appropriate in light of the market volatility to which the investment alternative may reasonably be expected to be subject.

(b) **REQUIRED INFORMATION.** The Plan Administrator shall provide each Participant with the opportunity to obtain sufficient information to make informed decisions with regard to investment alternatives available under the Plan, and incidents of ownership

appurtenant to such investments. Neither the Employer, Plan Administrator, Trustee, or any other individual associated with the Employer shall give investment advice to Participants with respect to Plan investments. The providing of information pursuant to this Article VIII shall not in any way be deemed to be the providing of investment advice, and shall in no way obligate the Employer, Plan Administrator, Trustee, or any other individual associated with the Employer to provide any investment advice.

(c) TRANSACTION COSTS. The Plan Administrator, pursuant to uniform and nondiscriminatory rules, may charge each Participant's Accounts for the reasonable expenses of carrying out investment instructions directly related to such Account, provided that each Participant is periodically (not less than quarterly) informed of such actual expenses incurred with respect to his or her respective Accounts.

(d) IMPERMISSIBLE INVESTMENT INSTRUCTION. The Trustee and/or the Plan Administrator shall decline to implement any Participant instructions if: (a) the instruction is inconsistent with any provisions of the Plan or Trust Agreement; (b) the instruction is inconsistent with any investment direction policies adopted by the Plan Administrator from time to time; (c) implementing the instruction would result in a prohibited transaction under applicable provisions of the Code; (d) implementing the instruction would result in taxable income to the Plan; (e) implementing the instruction would jeopardize the Plan's tax qualified status; or (f) implementing the instruction could result in a loss in excess of a Participant's Account balance. The Plan Administrator, pursuant to uniform and nondiscriminatory rules, may promulgate additional limitations on investment instruction from time to time.

(e) INDEPENDENT EXERCISE. A Participant shall be given the opportunity to make independent investment directions. No Plan fiduciary shall subject any Participant to improper influence with respect to any investment decisions, and nor shall any Plan fiduciary conceal any non-public facts regarding a Participant's Plan investment unless disclosure is prohibited by law. Plan fiduciaries shall remain completely neutral in all regards with respect to Participant investment direction. A Plan fiduciary may not accept investment instructions from a Participant known to be legally incompetent, and any transactions with a fiduciary, otherwise permitted under this Article VIII and the uniform and nondiscriminatory rules regarding investment direction promulgated by the Plan Administrator, shall be fair and reasonable to the Participant.

8.4. ADJUSTMENT OF ACCOUNTS.

Adjustments pursuant to Section 6.3 shall be made on a separate fund basis. Gains and income or losses attributable to each investment fund shall be allocable strictly to the investment fund and Accounts invested therein. Each investment fund shall be invested in accordance with the provisions of the Plan and the Trust Agreement.

8.5. LIMITATION OF LIABILITY AND RESPONSIBILITY.

The Trustee, the Plan Administrator, and the Employer shall not be liable for acting in accordance with the directions of a Participant pursuant to this Article VIII or for failing to act in the absence of any such direction. The Trustee, the Plan Administrator, and the Employer shall not be responsible for any loss resulting from any direction made by a Participant and shall

have no duty to review any direction made by a Participant. The Trustee shall have no obligation to consult with any Participant regarding the propriety or advisability of any selection made by the Participant. The Trustee, the Plan Administrator, and the Employer do not guarantee the Accounts of Participants in any way from loss or depreciation.

8.6. FORMER PARTICIPANTS AND BENEFICIARIES.

For purposes of this Article VIII, the term "Participant" shall be deemed to include former Participants and the Beneficiaries of any deceased Participants.

8.7. FAILURE TO GIVE DIRECTIONS.

In the event of a Participant's failure to give investment directions, the Plan Administrator shall direct the Trustee to invest the Participant's Accounts into the Plan's designated default Investment Fund or Funds, until such directions can be obtained and given effect.

ARTICLE IX
IN-SERVICE WITHDRAWALS

9.1. HARDSHIP WITHDRAWALS.

(a) GENERAL RULE. Effective January 1, 2019 and subject to Section 9.4 below, an Employee may request a withdrawal of his Pre-Tax Contributions Accounts, Roth 401(k) Contributions Account, Rollover Contributions Account, and Roth 401(k) Rollover Contribution Account on the basis of hardship; provided, however, that any earnings credited to a Participant's Pre-Tax Contributions Account or Roth 401(k) Contributions Account may not be included in a hardship withdrawal.

(b) LIMITATIONS ON AMOUNT OF WITHDRAWAL. In no event shall a withdrawal on the basis of hardship exceed the aggregate balance of the Accounts designated as available to fund a hardship withdrawal, set forth in paragraph (a) above.

(c) HARDSHIP DEFINED. A withdrawal may be made pursuant to this Section due to a "hardship" only if the Employee satisfies the Plan Administrator that the Employee has an immediate and heavy financial need and that the withdrawal is necessary in order to satisfy that need.

(d) IMMEDIATE AND HEAVY FINANCIAL NEED. The following are the only expenses or circumstances that will be deemed to give rise to an immediate and heavy financial need for purposes of this Section:

(1) Medical expenses described in Section 213(d) of the Code incurred by the Employee, the Employee's spouse, any of the Employee's dependents (as defined in Section 152 of the Code), or the Participant's designated Beneficiary; or

(2) The purchase (excluding mortgage payments) of a principal residence for the Employee; or

(3) Payment of tuition and related educational expenses, including room and board, for the next twelve (12) months for post-secondary education for the Employee or the Employee's spouse, children, or dependents (as defined in Section 152 of the Code), or the Participant's designated Beneficiary; or

(4) The need to prevent the eviction of the Employee from his principal residence or foreclosure on the mortgage on the Employee's principal residence; or

(5) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Section 165 of the Code (without regard to Code Section 165(h)(2) or Code Section 165(h)(5)); or

(6) Payment for burial or funeral expenses for the Employee's deceased parent, spouse, children, or dependents (as defined in Section 152 of the Code without regard to Section 152(d)(1)(B)), or the Participant's designated Beneficiary; or

(7) Effective January 1, 2019, expenses and losses (including loss of income) incurred by the Participant on account of a federally declared disaster, provided that the Participant's principal residence or principal place of employment was located within the area declared eligible for federal disaster assistance; or

(8) Any other circumstance or expense designated by the Commissioner of Internal Revenue as a deemed immediate and heavy financial need in any published revenue ruling, notice or other document of general applicability.

(e) NECESSITY. A withdrawal will be deemed to be necessary to satisfy an immediate and heavy financial need of an Employee only if all of the following requirements are satisfied:

(1) The withdrawal is not in excess of the amount of the immediate and heavy financial need of the Employee (including amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution);

(2) The Employee has obtained all distributions, other than hardship withdrawals, available under all plans maintained by the Employer; and

(3) The Employee must represent in writing that he has insufficient cash or other liquid assets to satisfy the need.

(f) NO RESTRICTIONS ON FUTURE CONTRIBUTIONS. Effective with regard to hardship withdrawals processed on or after January 1, 2019, the Employee's right to make elective deferral contributions to this Plan and any other tax-qualified retirement plan sponsored by the Employer following the hardship withdrawal shall not be suspended. Any contribution suspension implemented in connection with a hardship withdrawal processed prior to January 1, 2019 shall terminate as soon as administratively feasible following January 1, 2019, and any affected Participant may resume making elective deferral contributions as of any subsequent payroll period, in accordance with the Plan Administrator's uniform policies and procedures.

9.2. ROLLOVER AND ROTH 401(k) ROLLOVER CONTRIBUTION WITHDRAWALS.

Subject to Section 9.4 below, a Participant who has deposited Rollover Contributions or Roth 401(k) Rollover Contributions in the Plan may, subject to the non-discriminatory rules and procedures of the Plan Administrator, elect to withdraw all or any portion of his Rollover or Roth 401(k) Contributions Account balance at any time.

9.3. SPECIAL MILITARY SERVICE WITHDRAWALS.

(a) GENERAL. The special military service withdrawal options set forth in this Section 9.3 are subject to additional guidance from the Treasury Department and the Internal Revenue Service regarding the Heroes Earnings Assistance and Tax Relief Act of 2008. The Employer shall implement the provisions of this Section 9.3 in accordance with its reasonable and good faith interpretation of all available guidance on these withdrawal options and subject to Section 9.4 below.

(b) QUALIFIED RESERVIST DISTRIBUTIONS. If a Participant is an active Employee of the Employer, is a member of a reserve component of the United States military, and is called to active duty for a period of at least 180 days or for an indefinite period, the Participant may request a withdrawal of his Pre-Tax Contributions (exclusive of any earnings thereon) in accordance with Code Section 72(t)(2)(G) and Code Section 401(k)(2)(B)(i)(V). Any Qualified Reservist Distribution initiated pursuant to this Section must be requested and paid after the Participant is called to active duty and before the Participant's period of active duty is completed. A Qualified Reservist Distribution may be repaid to an individual retirement account, but may not be repaid to the Plan, regardless of whether the Participant is reemployed by the Employer following military leave.

(c) ACTIVE DUTY DISTRIBUTION. A Participant who is an active Employee of the Employer and who is called to active duty in the United States military for a period of at least 30 days, as described in Code Section 3401(h)(2)(A), will be treated as if he severed from employment with the Employer solely for purposes of requesting a distribution from the Plan in accordance with Section 10.3(a). Any such distribution shall be administered in accordance with Code Section 414(u)(12)(B). If a Participant receives a distribution pursuant to this Section, the Participant's right to make Employee Contributions to this Plan shall be suspended for a period of six (6) months following the month in which the withdrawal is made. Following the completion of the six (6) month suspension period, the Employee's prior contribution election (automatic or voluntary) shall be reinstated by the Plan Administrator, subject to the Employee's right to make a contrary election under Section 3.2 or change the contribution designation pursuant to Section 4.5.

9.4. IN-SERVICE WITHDRAWAL RULES AND RESTRICTIONS.

(a) ADMINISTRATIVE POLICIES. The Plan Administrator may promulgate uniform rules regarding the minimum amount of any withdrawal, the number of withdrawals a Participant may elect to receive in any one Plan Year, the effective date of a distribution pursuant to this Section and the procedures to be followed in requesting a distribution pursuant to this Section.

(b) EFFECT OF ELECTION. An active Employee Participant who elects to receive a withdrawal pursuant to this Article IX shall continue to participate in the Plan subsequent to his receipt of such withdrawal. Amounts withdrawn by the Participant pursuant to this Article IX may not be repaid to the Plan.

(c) EXPENSES. Any expense incurred in making a withdrawal pursuant to this Article IX shall be charged to the Participant's Account and shall be deducted prior to the disbursements of the withdrawal proceeds to the Participant.

ARTICLE X **DISTRIBUTION OF BENEFITS**

10.1. TERMINATION OF EMPLOYMENT.

A Participant shall be entitled to full distribution of his Accounts, as provided in Sections 10.3 and 10.4, following a bona fide separation from service with the Nation, regardless of whether the Participant has reached retirement age.

10.2. DEATH.

In the event that a Participant (which term for purposes of this Section includes former Participants) shall die prior to the full distribution of his Accounts under the Plan, the Participant's Beneficiary, designated in accordance with Section 10.7, shall be entitled to distribution of the Participant's Accounts at the time and in the manner provided in Sections 10.3 and 10.4. The Plan Administrator may require, and rely upon, proof of death of the Participant. The right of any spouse or Beneficiary to receive benefits pursuant to this Section 10.2 shall be determined conclusively by the Plan Administrator, based on any and all evidence the Plan Administrator may request and review, and its determination of death and the right of such spouse or Beneficiary to receive payment shall be binding and conclusive upon all persons whomsoever.

10.3. TIME OF DISTRIBUTION OF BENEFITS.

(a) TERMINATION DISTRIBUTIONS. As a general rule, and except as set forth in Section 10.4(b) regarding the automatic distribution of certain small Accounts, distributions pursuant to Section 10.1 shall commence as soon as administratively feasible following receipt of the Participant's request for a distribution. If the Participant is married, the Participant's spouse must consent to said distribution in accordance with Section 10.8.

(b) DEATH PRIOR TO COMMENCEMENT OF BENEFITS. In the event of the death of the Participant prior to the distribution of his Accounts under the Plan, payments to the Participant's Beneficiaries shall commence as soon as possible following the Participant's death and must be paid in full by December 31 of the calendar year which includes the fifth (5th) anniversary of the date of the Participant's death, unless the surviving spouse or other designated beneficiary make an appropriate election under Code Section 401(a)(9). All distributions made subsequent to the death of the Participant shall be made in accordance with the requirements of Code Section 401(a)(9) and Section 10.5 of the Plan.

(c) DEATH AFTER COMMENCEMENT OF PAYMENTS. In the event of the death of a Participant after distribution of his Plan Accounts commences but prior to the complete distribution to such Participant of the benefits payable to him under the Plan, any remaining benefits shall be distributed in the manner and pursuant to the schedule previously elected by the Participant. Notwithstanding the foregoing, all distributions made subsequent to the death of the Participant shall be made in accordance with the requirements of Code Section 401(a)(9) and Section 10.5 of the Plan.

(d) REQUIRED COMMENCEMENT OF PAYMENTS. Payment to a former Participant must commence by April 1 of the calendar year following the calendar year in which the Participant attains the age of seventy and one-half (70½) years or, if later, by April 1 of the calendar year following the calendar year in which the Participant retires, in accordance with requirements of Code Section 401(a)(9) and Section 10.5 of the Plan.

10.4. METHOD OF DISTRIBUTION.

(a) STANDARD FORM OF PAYMENT. The standard form of payment of benefits under this Plan shall be a single lump sum payment resulting in the complete liquidation of the Participant's Accounts.

(b) OPTIONAL FORM OF PAYMENT - PARTIAL DISTRIBUTION. A Participant may elect to receive a partial distribution of his Plan Account balance, payable in the form of a lump sum payment. Partial distributions may be subject to reasonable administrative limitations determined by the Plan Administrator on a uniform and nondiscriminatory basis.

(c) DISTRIBUTION OF SMALL AMOUNTS.

(1) DISTRIBUTION LIMIT. Notwithstanding any provision of the Plan to the contrary and subject to subsection (2) below, the Plan Administrator, in its sole discretion, may direct payment of benefits in a single lump sum, without the Participant's consent, if the total amount distributable to the Participant (or a surviving spouse or alternate payee) from all of his Accounts (excluding the Rollover and Roth 401(k) Rollover Contributions Accounts) does not exceed five thousand dollars (\$5,000.00). No distribution may be made pursuant to this Section after the payment of a Participant's Accounts has commenced unless the Participant consents in writing to the distribution. Any Roth 401(k) Contributions or Roth 401(k) Rollover Contributions held in the Participant Account shall be valued as if they are held in a separate plan for purposes of this Section 10.4(b), as required pursuant to applicable Treasury Regulations.

(2) TRANSFER TO IRA. If the Plan Administrator processes a distribution pursuant to subsection (1) above and the gross amount of the pre-tax distribution or the gross amount of the Roth distribution (including any Rollover Contributions or Roth 401(k) Rollover Contributions distributed, as applicable) exceeds One Thousand Dollars (\$1,000.00), such distribution shall be transferred to an individual retirement account established by the Plan Administrator for the benefit of the Participant in accordance with Code Section 401(a)(31)(B) and the regulations issued thereunder. In the event that the distribution processed pursuant to subsection (1) above includes Roth 401(k) Contributions, the individual retirement account established by the Plan Administrator to receive such Roth 401(k) Contributions and the

earnings allocated to such Roth 401(k) Contributions shall be a Roth IRA described in Code Section 408A(b). The Plan Administrator shall, when necessary to properly distribute pre-tax and Roth amounts from the Plan, establish more than one individual retirement account on behalf of a Participant.

(3) AMOUNT OF DISTRIBUTION. For the purpose of determining the amount to be distributed to Participants and Beneficiaries, the Participant's Accounts will as a general matter be valued as of the Valuation Date preceding the date upon which distribution is to commence. Valuation procedures may vary depending on the nature of the investment alternatives selected by the Participant but will be conducted in a non-discriminatory manner.

10.5. MINIMUM REQUIRED DISTRIBUTIONS.

The following provisions of this Section 10.5 are intended to demonstrate reasonable and good faith compliance with the final Treasury regulations issued pursuant to Section 401(a)(9) of the Code. Reasonable and good faith deviations from the provisions of this Section 10.5 and/or from the Treasury Regulations published under Code Section 401(a)(9) shall not adversely impact the Plan's compliance status as set forth in Section 823 of the Pension Protection Act of 2006 and Treasury Regulation Section 1.401(a)(9)-1, Q&A 2(d). The provisions of this Section 10.5 shall supersede all other provisions of the Plan to the extent that such other Sections of the Plan are inconsistent with the Treasury regulations. All distributions required under this Section 10.5 will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Code.

(a) TIME AND MANNER OF DISTRIBUTION.

(1) REQUIRED BEGINNING DATE. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

(2) DEATH OF PARTICIPANT BEFORE DISTRIBUTIONS BEGIN. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(A) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.

(B) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(C) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will

be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(D) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection (a)(2) above, other than subsection (a)(2)(A), will apply as if the surviving spouse were the Participant.

For purposes of subsections (a)(2) and Section (d), unless subsection (a)(2)(D) applies, distributions are considered to begin on the Participant's required beginning date. If subsection (a)(2)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (a)(2)(A).

(3) FORMS OF DISTRIBUTION. Unless the Participant's interest is distributed in the form of a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections (b) and (c) of this Section 10.5.

(b) REQUIRED MINIMUM DISTRIBUTIONS DURING PARTICIPANT'S LIFETIME.

(1) AMOUNT OF REQUIRED MINIMUM DISTRIBUTION FOR EACH DISTRIBUTION CALENDAR YEAR. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(A) The quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(B) If the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(2) LIFETIME REQUIRED MINIMUM DISTRIBUTIONS CONTINUE THROUGH YEAR OF PARTICIPANT'S DEATH. Required minimum distributions will be determined under this Section (b) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(c) REQUIRED MINIMUM DISTRIBUTIONS AFTER PARTICIPANT'S DEATH.

(1) DEATH ON OR AFTER DATE DISTRIBUTIONS BEGIN.

(A) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of

the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

(i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(B) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) DEATH BEFORE DATE DISTRIBUTIONS BEGIN.

(A) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in subsection (c)(1).

(B) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse

under subsection (a)(2)(A), this subsection (c)(2)(C) will apply as if the surviving spouse were the Participant.

(d) DEFINITIONS.

(1) DESIGNATED BENEFICIARY. The individual who is designated as the Beneficiary under Section 10.7 of the plan and is the designated Beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-4 of the Treasury regulations.

(2) DISTRIBUTION CALENDAR YEAR. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under subsection (a)(2). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(3) LIFE EXPECTANCY. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(4) PARTICIPANT'S ACCOUNT BALANCE. The Account balance as of the last day of the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance in the distribution calendar year and decreased by distributions made in the distribution calendar year. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) REQUIRED BEGINNING DATE. The date defined as April 1 of the calendar year following the calendar year in which the Participant attains the age of seventy and one-half (70-½) years or, if later, by April 1 of the calendar year following the calendar year in which the Participant retires.

(e) SUSPENSION OF 2009 DISTRIBUTIONS. Notwithstanding any provision of the foregoing to the contrary, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries

described in the preceding sentence will be given the opportunity to elect to receive the 2009 RMDs. In addition, notwithstanding Section 10.8 of the Plan, and solely for purposes of applying the direct rollover provisions of the Plan, neither the 2009 RMDs or the Extended 2009 RMDs shall be treated as eligible rollover distributions. A direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(H).

(f) ROTH 401(K) CONTRIBUTION ACCOUNTS. Notwithstanding any provision of the foregoing to the contrary, the Plan Administrator shall process distributions required pursuant to this Section 10.5 from pre-tax contribution sources first, before any Roth 401(k) Contributions or earnings thereon are distributed to a Participant or Beneficiary. Notwithstanding the foregoing, a Participant who is required to receive required minimum distributions in accordance with this Section 10.5 shall have the option to provide instructions to the Plan Administrator regarding the priority of contribution sources to be used in processing required minimum distributions.

10.6. ELIGIBLE ROLLOVER DISTRIBUTIONS.

(a) GENERAL. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an "eligible rollover distribution" paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover."

(b) DEFINITIONS.

(1) ELIGIBLE ROLLOVER DISTRIBUTION. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any amount that is distributed on account of hardship; any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and any other distribution that is reasonably expected to total less than Two Hundred Dollars (\$200.00) during a year. Notwithstanding the foregoing, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of Roth 401(k) Contributions; provided, however, that such portion is transferred in accordance with the specialized Roth rule set forth in subsection (2) below.

(2) ELIGIBLE RETIREMENT PLAN. An eligible retirement plan is an individual retirement account ("IRA") described in Section 408(a) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, or a Roth IRA described in Code

Section 408A(b) (provided that any such distribution is made in accordance with Section 408A of the Code) that accepts the distributee's eligible rollover distribution. To the extent that the eligible rollover distribution consists of Roth 401(k) Contributions and/or Roth 401(k) Rollover Contributions, an eligible retirement plan shall include only another designated Roth account maintained for the benefit of the Participant in another tax-qualified retirement plan or the Participant's Roth IRA.

(3) DISTRIBUTEES. A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. The definition of eligible retirement plan set forth in subsection (2) above shall apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order. A distributee also includes the Participant's non-spouse Beneficiary. In the case of a non-spouse Beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code that is established on behalf of the Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11).

(4) DIRECT ROLLOVER. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

10.7. DESIGNATION OF BENEFICIARY.

(a) GENERAL. Each Participant shall have the right to designate, in accordance with the uniform and nondiscriminatory policies of the Plan Administrator, a Beneficiary or Beneficiaries to receive his benefits hereunder in the event of the Participant's death. Each Participant may change his Beneficiary designation from time to time in the manner described above. Any Beneficiary designation made by a Participant who is married requires spousal consent in accordance with Section 10.8 below. Upon receipt of such designation by the Plan Administrator, such designation or change of designation shall become effective as of the date of the notice, whether or not the Participant is living at the time the notice is received. There shall be no liability on the part of the Employer, the Plan Administrator, or the Trustee with respect to any payment authorized by the Plan Administrator in accordance with the most recent valid Beneficiary designation of the Participant in its possession before receipt of a more recent and valid Beneficiary designation or proof of divorce rescinding a valid Beneficiary designation in accordance with paragraph (b) below. Any payment made to a Beneficiary or default beneficiary who is under the age of eighteen (18), or otherwise legally disabled, shall be paid in accordance with Section 10.9 below.

(b) EFFECT OF DIVORCE ON BENEFICIARY DESIGNATION. If the Participant designates a spouse as Beneficiary and subsequent to such Beneficiary designation, the Participant and spouse are divorced, the designation of the spouse as beneficiary is rescinded. If a valid Beneficiary designation is rescinded in accordance with this paragraph, then there shall be no designated Beneficiary until the Participant designates a new Beneficiary in accordance with paragraph (a) above.

(c) DEFAULT BENEFICIARY. If no designated Beneficiary is living when benefits become payable, or if there is no designated Beneficiary, the default beneficiary shall be the Participant's spouse. If the Participant is not married at the time of death, the default beneficiary shall be the Participant's children, including any legally adopted children, by right of representation. If the Participant is survived by neither a spouse nor living children (or grandchildren), then the Beneficiary shall be the estate of the Participant.

10.8. SPOUSAL CONSENT.

(a) GENERAL RULE. If a Participant is married and is required by the terms of the Plan to obtain spousal consent, spousal consent must be given in accordance with the provisions of this Section. Spousal consent will be irrevocable once given. The consent of the Participant's spouse to an election under the Plan shall be in writing, acknowledge the effect of such an election, be witnessed by a notary public or a designated representative of the Plan Administrator, and be provided to the Plan Administrator. No spousal consent will be required if the Plan Administrator determines, in its sole discretion, that such consent cannot be obtained because the spouse cannot be located or other circumstances exist that preclude the Participant from obtaining such consent (to the degree permitted under applicable regulations issued by the United States Treasury Department). Any spousal consent given pursuant to this Section or dispensed with pursuant to the preceding sentence will be valid only with respect to the spouse who signs the consent or with respect to whom the consent requirement is waived by the Plan Administrator.

(b) BENEFICIARY DESIGNATIONS. A Participant's spouse must consent to any Beneficiary designation, except for a designation naming the Participant's spouse as Beneficiary, in order for the designation to be effective. A Participant's spouse may not give a general consent to the designation of a Beneficiary, but rather must consent to the designation of a particular Beneficiary. If the Participant elects to change the Beneficiary, the spouse's prior consent will be null and void and a new consent will be required, unless the spouse's consent expressly permits a change of designation without the further consent of the spouse.

10.9. PAYMENTS TO DISABLED; MINORS.

If a person entitled to any payment hereunder is under a legal disability, which includes a beneficiary under the age of eighteen (18) at the time of payment, or in the sole judgment of the Plan Administrator is otherwise unable to apply such payment to his or her own interest and advantage, then the Plan Administrator, in the exercise of its discretion, may direct the Trustee to make any such payment in any one (1) or more of the following ways (a) directly to such person, (b) to such person's legal guardian or conservator, or (c) to such person's spouse or to any person charged with the legal duty of his or her support, provided that any payment made under this Section shall be for the benefit of such person. Alternatively, if a payment is to be made to a minor, the Plan Administrator, in its discretion, may allow the payment amount to be left in the Plan until the minor reaches the age of majority. The decision of the Plan Administrator shall in each case be final and binding upon all persons in interest.

10.10. UNCLAIMED ACCOUNTS; NOTICE.

(a) **GENERAL.** Neither the Employer, the Plan Administrator nor the Trustee shall be obliged to search for, or ascertain the whereabouts of, any Participant or Beneficiary. If a Participant or Beneficiary becomes entitled to a distribution under the Plan, the Plan Administrator shall notify the Participant or Beneficiary that he is entitled to a distribution by certified or registered mail addressed to the Participant's or Beneficiary's last known address of record with the Plan Administrator or the Employer. In the event that the Participant or Beneficiary fails to respond to a distribution notice sent via certified or registered mail, or in the event Plan Account statements, investment statements, or other Plan communication materials are returned to the Plan Administrator (regardless of whether they are sent via certified or registered mail) indicating that the Participant is no longer at the address on record, the Plan Administrator may, at its option, publish a notice in the Nation's newspaper or other appropriate newspaper and/or post notices in an attempt to locate missing Participants or Beneficiaries. Upon failure of the foregoing, the Plan Administrator shall take commercially reasonable steps to locate the Participant or Beneficiary.

(b) **SEGREGATION OF ACCOUNT.** If the Participant or Beneficiary cannot be located by the Plan Administrator, the Plan Administrator, in its discretion, may thereafter direct the Trustee to segregate the Participant's benefits in an "Unclaimed Accounts" fund maintained under the Trust Fund. The Plan's Unclaimed Accounts fund shall hold the assets of all unclaimed Participant and Beneficiary Accounts on a commingled basis, subject to appropriate recordkeeping requirements. Any such Unclaimed Accounts fund shall be invested in the Plan's default Investment Fund and the Plan Administrator and the Trustee shall have no other investment responsibility with regard to such benefits until the Participant or Beneficiary provides current investment directions pursuant to the Plan and/or claims any distributions which may be due. The segregated deposits shall be entitled to all income they earn and shall bear all expense or loss (including administration expenses) they incur.

(c) **FORFEITURE OF ACCOUNT; RESTORATION.** Should the Plan Administrator not be able to locate a Participant who is entitled to be paid a benefit under the Plan after making reasonable efforts to contact said Participant under the above procedures, and a period of one (1) year has elapsed from the Participant's termination date, a forfeiture of the Participant's vested benefit may occur and be treated as other forfeitures under this Plan. Notwithstanding said forfeiture, in the event that the Participant (or Beneficiary) should thereafter make a claim for his benefits, as determined prior to the date of the forfeiture, the Plan Administrator shall restore his Account balance together with annual interest at the "Short Term Federal Rate," as defined in Code Section 1274, from the date of the forfeiture. Such amounts shall be restored to the extent possible with other forfeitures available for allocation in the year of restoration. Should there be insufficient forfeitures occurring at the time of the restoration, the Employer shall be obligated to restore said Account by means of a special contribution to the Plan.

10.11. UNDERPAYMENT OR OVERPAYMENT OF BENEFITS.

In the event that, through misstatement or computation error, benefits are underpaid or overpaid, there shall be no liability for any more than the correct benefit sums under the Plan. Overpayment may be deducted from future payments under the Plan, and under payments may

be added to future payments under the Plan. In lieu of receiving reduced benefits under the Plan, a Participant or Beneficiary may elect to make a lump sum repayment of any overpayment.

ARTICLE XI

INALIENABILITY OF BENEFITS

11.1. NO ASSIGNMENT PERMITTED.

(a) **GENERAL PROHIBITION.** No Participant or Beneficiary, and no creditor of a Participant or Beneficiary, shall have any right to assign, pledge, hypothecate, anticipate, or in any way create a lien upon the Trust Fund. All payments to be made to Participants or their Beneficiaries shall be made only upon their personal receipt or endorsement, except as provided in Section 10.9, and no interest in the Trust Fund shall be subject to assignment or transfer or otherwise be alienable, either by voluntary or involuntary act or by operation of law or equity, or subject to attachment, execution, garnishment, sequestration, levy, or other seizure under any legal, equitable or other process, or be liable in any way for the debts or defaults of Participants and Beneficiaries.

(b) **PERMITTED ARRANGEMENTS.** This Section 11.1 shall not preclude arrangements for the withholding of taxes from benefit payments, arrangements for the recovery of benefit overpayments, arrangements for the transfer of benefit rights to another plan, or arrangements for direct deposit of benefit payments to an account in a bank, savings and loan association, or credit union (provided that such arrangement is not part of an arrangement constituting an assignment or alienation). Additionally, this Section shall not preclude arrangements for the distribution of the benefits of a Participant or Beneficiary pursuant to the terms and provisions of a Qualified Domestic Relations Order in accordance with the following provisions of this Article XI.

11.2. QUALIFIED DOMESTIC RELATIONS ORDERS.

A Qualified Domestic Relations Order is an order described in Section 401(a)(13) and Section 414(p) of the Code that is (1) issued by, domesticated through, or recognized by the Oneida Judiciary or a state court of competent jurisdiction and (2) permits distribution of benefits in a distribution mode provided under the Plan, does not require payment of increased benefits and does not require payment of benefits allocated to a different alternate payee under a prior Qualified Domestic Relations Order.

11.3. PROCESSING QUALIFIED DOMESTIC RELATIONS ORDERS.

(a) **NOTICE.** All decisions and determinations with respect to a domestic relations order, including whether such order is a Qualified Domestic Relations Order within the meaning of this Article XI, shall be made by the Plan Administrator within a reasonable time following its receipt of such order and in accordance with such uniform rules and procedures as may be adopted by the Plan Administrator. Upon receipt of a domestic relations order, the Plan Administrator shall notify the Participant or Beneficiary whose benefits may be affected by such order of its receipt of such order. The Plan Administrator shall also

advise the Participant or Beneficiary and the alternate payee named in the order of its rules and procedures relating to the determination of the qualified status of such order.

(b) RETENTION OF PAYMENTS. If payment of benefits to the Participant or Beneficiary has commenced at the time a domestic relations order is received by the Plan Administrator or benefits become payable after receipt of such order, the Plan Administrator shall direct the Trustee to segregate and hold the amounts which would be payable to the alternate payee under the order if such order is ultimately determined to be a Qualified Domestic Relations Order. If the Plan Administrator determines that the order is a Qualified Domestic Relations Order within eighteen (18) months of the segregation of benefits payable to the alternate payee under such order, the Plan Administrator shall direct the Trustee to pay the segregated amounts (plus any earnings thereon) as well as such future amounts as may be specified in such order to the alternate payee. If the Plan Administrator determines that the order is not a Qualified Domestic Relations Order or is unable to determine whether such order is a Qualified Domestic Relations Order within the eighteen (18) month period following the segregation of benefits, the Plan Administrator shall direct the Trustee to pay the segregated amounts (plus any earnings thereon) to the Participant or Beneficiary. A determination by the Plan Administrator after the close of such eighteen (18) month period that the order is a Qualified Domestic Relations Order shall be applied prospectively. All determinations of the Plan Administrator hereunder with respect to the status of an order as a Qualified Domestic Relations Order shall be binding and conclusive on all interested parties, subject to the provisions of Section 12.4.

11.4. EARLY COMMENCEMENT OF PAYMENTS TO ALTERNATE PAYEES.

(a) EARLY PAYMENTS. An order requiring payment to an alternate payee before a Participant has separated from employment may qualify as a Qualified Domestic Relations Order even if it requires payment prior to the Participant's "earliest retirement age," which is the earliest date on which the Participant could elect to receive retirement benefits pursuant to this Plan. If the order requires payments to commence prior to a Participant's actual retirement, the amounts of the payments must be determined as if the Participant had retired on the date on which such payments are to begin under such order but taking into account only the present account balances at that time.

(b) ALTERNATE PAYMENT FORMS. The order may call for the payment of benefits to an alternate payee in any form in which benefits may be paid under the Plan to the Participant.

ARTICLE XII **ADMINISTRATION**

12.1. TRUSTEE.

The Nation has appointed State Street Bank and Trust Company as the non-discretionary successor Trustee of the Plan, to serve in accordance with the terms of the Trust Agreement. The Trustee shall acknowledge acceptance of their appointment by the execution of the Trust Agreement or, in the case of a successor Trustee, by the execution of an appropriate written instrument.

12.2. PLAN ADMINISTRATOR.

The Nation shall be the Plan Administrator, but it may delegate its duties as such to an individual or committee. Any delegation to a committee must be made in accordance with the procedures described in Section 12.7.

12.3. ALLOCATION OF FIDUCIARY RESPONSIBILITY.

The Plan Administrator is the named fiduciary with respect to the administration of the Plan. The Plan Administrator shall not be responsible for any fiduciary functions or other duties assigned to the Trustee pursuant to this Plan or the Trust Agreement.

12.4. POWERS OF THE PLAN ADMINISTRATOR.

(a) **GENERAL POWERS.** The Plan Administrator shall have the power and discretion to perform the administrative duties described in this Plan or required for proper administration of the Plan and shall have all powers necessary to enable it to properly carry out such duties. Without limiting the generality of the foregoing, the Plan Administrator shall have the power and discretion to construe and interpret this Plan, to hear and resolve claims relating to this Plan, and to decide all questions and disputes arising under this Plan. The Plan Administrator shall determine, in the exercise of its discretion, the eligibility of employees to participate in the Plan, the service credited to the Employees, the status and rights of a Participant, and the identity of the Beneficiary or Beneficiaries entitled to receive any benefits payable hereunder on account of the death of a Participant.

(b) **BENEFIT PAYMENTS.** Except as is otherwise provided hereunder, the Plan Administrator shall determine the manner and time of payment of benefits under this Plan. All benefit disbursements by the Trustee shall be made upon the instructions of the Plan Administrator.

(c) **EXERCISE OF DISCRETION; DECISIONS FINAL.** All powers and duties conferred on the Plan Administrator shall be exercised or performed by the Plan Administrator in the exercise of its discretion regardless of whether the Plan provision conferring such power or imposing such duty specifically refers to the Plan Administrator's discretion. All decisions of the Plan Administrator upon all matters within the scope of its authority shall be binding and conclusive upon all persons.

(d) **REPORTING AND DISCLOSURE.** The Plan Administrator shall file all reports and forms lawfully required to be filed by the Plan Administrator with any governmental agency or department, federal or state, and shall distribute any forms, reports, statements, or plan descriptions lawfully required to be distributed to Participants and others by any governmental agency or department, Tribal, Federal, or state.

(e) **INVESTMENT.** The Plan Administrator shall keep itself advised with respect to the investment of the Trust Fund and shall report to the Business Committee regarding the investment and reinvestment of the Trust Fund not less frequently than annually. The Plan Administrator shall have power to direct specific investments of the Trust Fund only where such power is expressly conferred by this Plan and only to the extent described in this

Plan. All other investment duties shall be the responsibility of the Trustee or Participants directing investment in Investment Funds pursuant to Article VIII.

12.5. CLAIMS.

(a) **FILING OF CLAIM.** A Participant or Beneficiary entitled to benefits need not file a written claim to receive benefits. If an Employee, Participant, Beneficiary, or any other person is dissatisfied with the determination of his benefits, eligibility, participation, or any other right or interest under this Plan, such person may file a written statement setting forth the basis of the claim with the Plan Administrator in a manner prescribed by the Plan Administrator. In connection with the determination of a claim, the claimant may examine this Plan and any other pertinent documents generally available to Participants relating to the claim.

(b) NOTICE OF DECISION.

(1) **TIMING.** A written notice of the disposition of any such claim shall be furnished to the claimant within ninety (90) days after the claim is filed with the Plan Administrator. However, with respect to a claim for benefits due to the Participant's Disability, the disposition shall be furnished within forty-five (45) days.

(2) **EXTENSION.** If the Plan Administrator determines that special circumstances require an extension of time to process the claim, the Plan Administrator may, prior to the end of the initial 90-day period, give written notice to the claimant indicating the special circumstances requiring the extension. The extension shall not exceed ninety (90) days. However, with respect to a claim for benefits due to the Participant's Disability, if the Plan Administrator determines that an extension is necessary due to matters beyond the control of the Plan, the initial 45-days to process the claim may be extended by thirty (30) days with the option to extend an additional thirty (30) days provided the Plan Administrator provides written notice prior to the end of the initial forty-five (45) days for the first extension and prior to the end of the initial thirty (30) day extension for the second extension.

(3) **CONTENTS OF THE NOTICE OF DECISION.** The written notice of the disposition of the claim shall refer, if appropriate, to pertinent provisions of this Plan, shall set forth the reasons for denial of the claim if the claim is denied, and, where appropriate, shall explain how the claimant can perfect the claim. If the claim is denied, in whole or in part, the notice of disposition also shall include a description of the Plan's review procedures, including time limitations applicable to such procedures.

(4) **ADDITIONAL REQUIREMENTS FOR DISABILITY CLAIM DENIALS.** In the case of an adverse benefit determination with respect to the Participant's Disability benefits, in addition to the contents of the notice of decision required in subparagraph (3) above, the written notice of disposition shall also include the following: (A) the basis for disagreeing with or not following the views of health care, medical, or vocational professionals or the Social Security Administration's determination of a disability; (B) if the denial is based on a medical necessity or experimental treatment or a similar exclusion, the explanation of scientific or clinical judgment for the denial or, alternatively, a statement that such explanation will be provided free of charge upon request; (C) the specific internal rules, guidelines, protocols, or standards used to deny the claim or, alternatively, a statement that specific

internal rules, guidelines, protocols, or standards do not exist; and (D) a statement that the claimant is entitled to receive reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim for benefits upon request and free of charge. The notification shall be provided in a culturally and linguistically appropriate manner.

(c) REVIEW OF ADVERSE BENEFITS DETERMINATION.

(1) REQUEST FOR REVIEW. Within sixty (60) days after receiving the written notice of the Plan Administrator's adverse benefits determination, the claimant may request in writing, and shall be entitled to, a review meeting with the Plan Administrator to present reasons why the claim should be allowed. However, for a claim for benefits due to the Participant's Disability, the claimant may request review within one hundred eighty (180) days of receiving the Plan Administrator's notice of an adverse benefits determination. If the claimant does not request a review meeting within sixty (60) days (one hundred eighty (180) days for Disability claims) after receiving written notice of the Plan Administrator's disposition of the claim, the claimant shall be deemed to have accepted the Plan Administrator's written disposition, unless the claimant shall have been physically or mentally incapacitated so as to be unable to request review within the sixty (60) day period (one hundred eighty (180) day for Disability claims).

(2) REVIEW PROCEDURES. The claimant shall be entitled to be represented by counsel at the review meeting. The claimant also may submit a written statement of his claim and the reasons for granting the claim. Such statement may be submitted in addition to, or in lieu of, the review meeting with the Plan Administrator. The claimant shall be provided, upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim for benefits. The Plan Administrator shall have the right to request of and receive from a claimant such additional information, documents, or other evidence as the Plan Administrator may reasonably require and provide the claimant with up to forty-five (45) days to submit such information, documents, or evidence.

(3) ADDITIONAL PROCEDURES FOR DISABILITY REVIEWS. For all reviews of denials of a claimant's claim for Disability benefits, in addition to all procedures set forth in subparagraph (2) above, the following shall apply: (A) the review shall not afford deference to the initial denial, and the review shall be conducted by an appropriately named fiduciary who is neither the individual who made the initial denial, nor a subordinate of that individual; (B) in the case of a denial based on medical judgment, the fiduciary shall consult with an appropriately trained health care professional who was not consulted in making the benefit determination; (C) any medical or vocational experts whose advice was obtained must be identified, even if the advice was not relied upon to make the determination; (D) sufficiently in advance of a review, the claimant shall be provided any new or additional evidence used in connection with the disability claim, free of charge and as soon as possible, so as to give claimant an opportunity to respond to such evidence; and (E) before a review for disability benefits may be denied for new or additional rationale, the claimant shall be provided with the rationale, free of charge and as soon as possible, sufficiently in advance of the date of review, so as to give the claimant an opportunity to respond to the new rationale.

(d) DECISION FOLLOWING REVIEW. A decision on review shall be rendered in writing by the Plan Administrator ordinarily not later than sixty (60) days (forty-five

(45) days with respect to a claim for benefits due to the Participant's Disability) after review, and a written copy of such decision shall be delivered to the claimant. If special circumstances require an extension of the ordinary period, the Plan Administrator shall so notify the claimant in writing prior to the expiration of the initial sixty (60) day (forty-five (45) day with respect to a claim for benefits due to the Participant's Disability) period. In any event, if a claim is not determined within one hundred twenty (120) days (ninety (90) days with respect to a claim for benefits due to the Participant's Disability) after submission for review, it shall be deemed to be denied.

(e) DECISIONS FINAL; PROCEDURES MANDATORY. To the extent permitted by law, a decision on review by the Plan Administrator shall be binding and conclusive upon all persons whomsoever. To the extent permitted by law, completion of the claims procedures described in this Section shall be a mandatory precondition that must be complied with prior to commencement of a judicial action by a person claiming rights under the Plan or by another person claiming rights through such a person. The Plan Administrator may, in its sole discretion, waive these procedures as a mandatory precondition to such an action.

(f) JUDICIAL ACTIONS. After exhausting internal claims procedures, a claimant who is not satisfied may seek judicial review in the Oneida Judiciary if he believes that the Plan Administrator has abused its discretion in hearing the, but only after the Business Committee has authorized such legal action, pursuant to tribal law. Any such proceeding shall not be a *de novo* review, but shall be limited to a determination of whether there has been an abuse of discretion. The Plan Administrator is not authorized to waive Tribal sovereignty, which may be waived only by specific and express action of the Business Committee. All matters and disputes related to the retirement benefit programs of the Nation shall be determined within the exclusive jurisdiction of the Oneida Judiciary.

(g) ARBITRATION. The Business Committee reserves the right to require binding arbitration in lieu of any judicial proceeding or review with regard to Plan claims to the fullest extent permitted by law, including, as applicable, the Federal Arbitration Act. If the Nation exercises this right, the procedures (and identity of the arbitrator or arbitrator selection process) shall be communicated to Participants in the same form or timing as the Plan Administrator uses for the communication of the Plan documents, such as summaries. An arbitrator shall have no authority to modify the terms of this Plan or to provide relief or review in excess of the scope that would be provided under a judicial review.

12.6. PAYMENT OF PLAN EXPENSES.

Expenses of the Plan, to the extent that the Employer does not pay such expenses, may be paid out of the assets of the Plan. Expenses that may be paid by the Plan shall include any expenses incurred by the Plan Administrator or Trustee in the exercise of their duties under the Plan, including, but not limited to, expenses for recordkeeping and other administrative services; accounting expenses fees and expenses of the custodian; expenses for investment education and investment management services; and direct costs that the Employer incurs with respect to the Plan.

12.7. CREATION OF COMMITTEE.

Upon action of the Business Committee, a committee may be appointed to serve as Plan Administrator. The committee may consist of a single individual or individuals who shall hold office during the pleasure of the Business Committee. The committee members shall serve without compensation but shall be reimbursed for all expenses by the Employer. The committee shall conduct itself in accordance with committee bylaws, as adopted by the Business Committee and as may be modified by the Business Committee from time to time. In the event of a conflict between the provisions of the Plan and the committee bylaws, the terms of the Plan shall control.

12.8. APPOINTMENT OF AGENTS.

The Plan Administrator may appoint such other agents, who need not be members of the committee, as it may deem necessary for the effective performance of its duties, whether ministerial or discretionary, as the committee may deem expedient or appropriate. The compensation of any agents who are not Employees of the Employer shall be fixed by the committee within any limitations set by the Business Committee.

12.9. CONFLICT OF INTEREST.

No individual or member of the committee serving as Plan Administrator who is a Participant shall take any part in any action in connection with his participation as an individual. Such action shall be voted or decided by the remaining members of the committee, or by another individual appointed by the Business Committee to vote on or decide such action, if no Plan Administrator or committee member is permitted to take action pursuant to this Section.

12.10. OTHER FIDUCIARY CAPACITIES.

The Plan Administrator or any member of the committee may also serve in any other fiduciary capacity, and, specifically, as Trustee. Notwithstanding any other provision of this Plan, if the same individual serves as Plan Administrator and Trustee, or any two (2) members of the committee also serve as Trustee, any provision of this Plan or the Trust Agreement which requires a direction, certification, notification, or other communication from the Plan Administrator to the Trustee shall be inapplicable. If and so long as the same individual serves as Plan Administrator and Trustee, or any two (2) members of the committee also serve as Trustee, any action taken by either the committee or the Trustee shall be deemed to be taken by the appropriate party.

ARTICLE XIII **SCOPE OF RESPONSIBILITY**

13.1. SCOPE OF RESPONSIBILITY.

(a) GENERAL. The Employer, the Plan Administrator, the investment manager, and the Trustee shall perform the duties respectively assigned to them under this Plan and the Trust Agreement and shall not be responsible for performing duties assigned to others under the terms and provisions of this Plan or the Trust Agreement. No inference of

approval or disapproval is to be made from the inaction of any party described above or the employee or agent of any of them with regard to the action of any other such party. Persons, organizations, or corporations acting in a position of any fiduciary responsibility with respect to the Plan or the Trust Fund may serve in more than one fiduciary capacity.

(b) ADVISORS. The Employer, the Plan Administrator, and the Trustee shall have authority to employ advisors, legal counsel, accountants, and investment managers in connection with the administration of the Trust Fund, as set forth in the Trust Agreement. To the extent permitted by applicable law, the Employer, the Plan Administrator, and the Trustee shall not be liable for complying with the directions of any advisors, legal counsel, accountants, or investment managers appointed pursuant to this Plan or the Trust Agreement.

(c) INDEMNIFICATION. To the extent permitted by law, the Nation shall and does hereby jointly and severally indemnify and agree to hold harmless its employees, officers and directors who serve in fiduciary capacities with respect to the Plan and the Trust Agreement from all loss, damage, or liability, joint or several, including payment of expenses in connection with defense against any such claim, for their acts, omissions, and conduct, and for the acts, omissions, and conduct of their duly appointed agents, which acts, omissions, or conduct constitute or are alleged to constitute a breach of such individual's fiduciary or other responsibilities under the Act or any other law, except for those acts, omissions, or conduct resulting from his own willful misconduct, willful failure to act, or gross negligence; provided, however, that if any party would otherwise be entitled to indemnification hereunder in respect of any liability and such party shall be insured against loss as a result of such liability by any insurance contract or contracts, such party shall be entitled to indemnification hereunder only to the extent by which the amount of such liability shall exceed the amount thereof payable under such insurance contract or contracts.

(d) INSURANCE. The Nation may obtain insurance covering itself and others for breaches of fiduciary obligations under this Plan or the Trust Agreement to the extent permitted by law, and nothing in the Plan or the Trust Agreement shall restrict the right of any person to obtain such insurance for himself in connection with the performance of his duties under this Plan or the Trust Agreement. No bond shall be required of the Trustee unless required by law notwithstanding this provision. The Trustee, the Plan Administrator, and the Nation do not in any way guarantee the Trust Fund from loss or depreciation. The Nation does not guarantee the payment of any money which may be or become due to any person from the Trust Fund, and the liability of the Plan Administrator and the Trustee to make any payment hereunder at any and all times will be limited to the then available assets of the Trust Fund.

13.2. PROHIBITION AGAINST CERTAIN PERSONS HOLDING POSITIONS.

No person who has been convicted of a felony shall be permitted to serve as a fiduciary, officer, trustee, custodian, counsel, agent, or employee of this Plan, or as a consultant to this Plan, unless permitted under the Act and regulations thereunder. The Plan Administrator shall ascertain to the extent practical that no violation of this Section occurs. In any event, no person knowingly shall permit any other person to serve in any capacity which would violate this Section.

ARTICLE XIV
AMENDMENT MERGER AND TERMINATION

14.1. AMENDMENT.

The Nation shall have the right at any time, by an instrument in writing duly executed, acknowledged and delivered to the Plan Administrator and the Trustee, to modify, alter or amend this Plan, in whole or in part, prospectively or retroactively; provided, however, that the duties and liabilities of the Plan Administrator and the Trustee hereunder shall not be substantially increased without their written consent; and provided further that the amendment shall not reduce any Participant's interest in the Plan, calculated as of the date on which the amendment is adopted.

14.2. PLAN MERGER OR CONSOLIDATION.

Subject to the restrictions noted in this Section, the Nation reserves the right to merge or consolidate this Plan with any other plan or to direct the Trustee to transfer the assets held in the Trust Fund and/or the liabilities of this Plan to any other plan or to accept a transfer of assets and liabilities from any other plan. In the event of the merger or consolidation of this Plan and the Trust Fund with any other plan, or a transfer of assets or liabilities to or from the Trust Fund to or from any other such plan, then each Participant shall be entitled to a benefit immediately after such merger, consolidation or transfer (determined as if the plan was then terminated) that is equal to or greater than the benefit he would have been entitled to receive immediately before such merger, consolidation, or transfer (if this Plan had then terminated).

14.3. TERMINATION OF PLAN OR DISCONTINUANCE OF CONTRIBUTIONS.

(a) COMPLETE TERMINATION OR DISCONTINUANCE. It is the expectation of the Nation that this Plan and the payment of contributions hereunder will be continued indefinitely. However, continuance of the Plan is not assumed as a contractual obligation of the Nation, and the right is reserved at any time to terminate this Plan or to reduce, temporarily suspend, or discontinue contributions hereunder. In the event the Business Committee decides that it is impossible or inadvisable for the Nation to make its contributions as herein provided, the Business Committee shall have the power to terminate this Plan or its contributions by appropriate resolution. A copy of such resolution or resolutions shall be delivered to the Trustee. In such event or in the event the Nation shall discontinue contributions without the delivery to the Trustee of such a resolution, then after the date specified in such resolution, or after the date of such discontinuance of contributions, the balance credited to the Employer Contributions Account of each Participant shall be fully vested and nonforfeitable.

(b) LIQUIDATION OF TRUST FUND. In the event of termination of the Plan or discontinuance of contributions, the Plan Administrator shall either promptly direct the Trustee to liquidate and distribute all assets remaining in the Trust Fund to Participants in accordance with Article X as though their employment with the Nation had terminated or shall direct the Trustee to continue the Plan, in which event benefits shall be distributed at the times and in the manner specified in Article X. Upon the liquidation of all assets of the Trust Fund, the Plan Administrator, after deducting all costs and expenses of liquidation and distribution, shall make the allocations required under Article VI where applicable, with the same effect as

though the date of completion of liquidation were a Valuation Date. The Plan Administrator may postpone distributions after termination of the Plan or discontinuance of Employer Contributions until a reasonable time after the Nation has received from the United States Treasury Department a determination under the provisions of the Code as to the effect of such termination or discontinuance upon the qualification of the Plan. The Nation may, by written notice delivered to the Trustee, waive the Nation's right hereunder to apply for such a determination, and if no application for determination shall have been made within sixty (60) days after the date specified in the terminating resolution or after the date of discontinuance of contributions, the Nation shall be deemed to have waived such right. All Plan assets shall be allocated in accordance with the terms of the Plan and no Employer Contributions shall be returned to the Employer except as set forth in Section 5.6 or as otherwise permitted by statute or Revenue Ruling 91-4.

(c) PARTIAL TERMINATION. If the Plan is terminated or contributions are discontinued with respect to a group or class of Participants, then after the date of partial termination or partial discontinuance of contributions, the balance credited to the Employer Contributions Accounts of all Participants affected by such partial termination or partial discontinuance of contributions shall become fully vested and nonforfeitable and the Accounts of such Participants either shall be distributed or held pending the subsequent termination of employment of such Participants, as provided in Section (b) above.

14.4. LIMITATION OF EMPLOYER LIABILITY.

The adoption of this Plan is strictly a voluntary undertaking on the part of the Nation and shall not be deemed to constitute a contract between the Employer and any Employee or Participant or to be consideration for, an inducement to, or a condition of the employment of any Employee. A Participant, Employee, or Beneficiary shall not have any right to retirement or other benefits except to the extent provided herein.

ARTICLE XV **GENERAL PROVISIONS**

15.1. LIMITATION ON PARTICIPANT'S RIGHTS.

Participation in the Plan shall not give any Employee the right to be retained in the Employer's employ or any right or interest in the Trust Fund other than as herein provided. The Employer reserves the right to dismiss any Employee without any liability for any claim either against the Trust Fund, except to the extent herein provided, or against the Nation.

15.2. EXCLUSIVE BENEFIT.

Except as otherwise provided herein or in the Trust Agreement, it shall be impossible for any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of Participants and their Beneficiaries, except that payment of taxes and administration expenses may be made from the Trust Fund as provided in the Trust Agreement.

15.3. UNIFORM ADMINISTRATION.

Whenever in the administration of the Plan any action is required by the Plan Administrator, such action shall be uniform in nature as applied to all persons similarly situated and no such action shall be taken which will discriminate in favor of Highly Compensated Employees.

15.4. HEIRS AND SUCCESSORS.

All of the provisions of this Plan shall be binding upon all persons who shall be entitled to any benefits hereunder, and their heirs and legal representatives.

15.5. ASSUMPTION OF QUALIFICATION.

Unless and until advised to the contrary, the Trustee may assume that the Plan is a qualified plan under the provisions of the Code relating to such plans, and that the Trust Fund is entitled to exemption from income tax under such provisions.

IN WITNESS WHEREOF, the Nation has caused this Plan to be executed by its duly authorized representative on this 12th day of December, 2018.

ONEIDA NATION

By: [Signature]

Title: Chief Financial Analyst

"Nation" and "Employer"

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # 12-11-19-B First Amendment to the Governmental 401(k) Plan

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Nation sponsors two tax-qualified retirement plans for the benefit of its employees, known as the Oneida Nation Governmental 401(k) Plan (the "Governmental Plan") and the Oneida Nation Enterprise 401(k) Plan (the "Enterprise Plan"); and
- WHEREAS,** the Nation wishes to make certain changes to the Governmental Plan to document the reflect the continuing availability of Roth conversions and in-service withdrawals at normal retirement age, effective January 1, 2019; and
- WHEREAS,** outside legal counsel to the Nation has prepared the First Amendment to the Governmental Plan to make the Nation's desired design changes.

NOW THEREFORE BE IT RESOLVED, that the Oneida Business Committee hereby authorizes, approves, and adopts the First Amendment to the Oneida Nation Governmental 401(k) Plan, effective January 1, 2019.

BE IT FURTHER RESOLVED, that the Chief Financial Officer shall be, and hereby is, authorized and directed to execute on behalf of the Nation the First Amendment to the Governmental Plan upon receipt of such document from Transamerica and following review and approval by the Nation's Chief Financial Officer and the Nation's Chief Deputy Counsel.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 8 members were present at a meeting duly called, noticed and held on the 11th day of December, 2019; that the forgoing resolution was duly adopted at such meeting by a vote of 7 members for, 0 members against, and 0 members not voting*; and that said resolution has not been rescinded or amended in any way.


Lisa Summers, Secretary
Oneida Business Committee

*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."

**FIRST AMENDMENT
TO THE
ONEIDA NATION
GOVERNMENTAL 401(K) PLAN**

Effective January 1, 1992, the Oneida Nation, a federally recognized Tribal government (the "Nation") established the Oneida Tribe of Indians of Wisconsin Profit Sharing Plan, now known as the Oneida Nation Governmental 401(k) Plan (the "Plan"). The Plan was amended effective January 1, 1997 to include a Code Section 401(k) elective deferral arrangement. The Plan was amended on multiple occasions thereafter and received its most recent favorable determination letter from the Internal Revenue Service on October 23, 2012. Effective April 1, 2011, the Plan was amended and restated in its entirety using a Transamerica Retirement Solutions Corporation Volume Submitter 401(k) Profit Sharing Plan. Effective January 1, 2019, the Plan was again amended and restated in the form of an individually designed Plan document. By this instrument, the Nation intends to amend the Plan effective January 1, 2019 to document the continuing availability of in-service Normal Retirement Age withdrawals and Roth Conversions .

1. The provisions of this First Amendment shall be effective as of January 1, 2019.
2. This Amendment shall amend only those sections of the Plan set forth herein, and those sections not amended shall remain in full force and effect.
3. Article IX of the Plan hereby is amended by adding the following Section 9.5 to the end thereof to read as follows:

9.5. NORMAL RETIREMENT AGE WITHDRAWALS.

Subject to Section 9.4 above, a Participant who has reached his Normal Retirement Age may elect to withdraw all or any portion of the balance of his Accounts in the Plan.

4. Article IX of the Plan hereby is amended by adding the following Section 9.6 to the end thereof to read as follows:

9.6. CONVERSION OF PRE-TAX CONTRIBUTIONS TO ROTH 401(K) CONTRIBUTIONS.

(a) GENERAL. Subject to the restrictions set forth below and in Section 9.4, a Participant may convert any or all of the vested pre-tax amounts held in his Account to Roth amounts, in a transaction referred to as a "Roth Conversion." A Roth Conversion will be carried out through an in-service withdrawal of the requested pre-tax amounts, taxation of the pre-tax amounts to be converted and a direct rollover of those amounts in the form of Roth Contributions. This Section does not create an independent in-service withdrawal option for Participants who do not wish to complete a Roth Conversion.

(b) TAXATION. A Roth Conversion shall be treated as a taxable distribution from the Plan in the year of the Roth Conversion and shall result in the issuance of an IRS Form 1099-R to the Participant reporting the amount of the Roth Conversion as taxable income to the Participant, in accordance with the requirements of Section 408A(d)(3)(A) of the Code. A Roth Conversion is not subject to mandatory income tax withholding under Section 3405(c) of the Code. If a Participant fails to satisfy the five (5) year holding period rules of Code Section 408A(d)(3)(F) with regard to a Roth Conversion, the Participant may be subject to early withdrawal penalties under Section 72(t) of the Code.

(c) LIMITATIONS. No Roth Conversion shall include any amount that does not constitute an eligible rollover distribution from the Plan, as determined in accordance with Section 402(c)(4) of the Code.

(d) ACCOUNTING AND ALLOCATION. The Plan Administrator may create a Roth Conversion Account as a sub-account of any Account established in Article VI, as necessary for purposes of proper accounting under the Plan. Any pre-tax amounts which are converted to Roth 401(k) amounts in accordance with this Section shall be transferred to the appropriate Account or sub-account maintained on behalf of such Participant as of the effective date of the Roth Conversion. All Roth Conversions shall be accounted for and allocated by the Plan Administrator, in accordance with its uniform and non-discriminatory policies and procedures.

(e) WITHDRAWAL OF ROTH CONVERSIONS. For purposes of in-service withdrawals from the Plan, Roth Conversions are subject to the same restrictions as apply to the pre-tax Accounts from which the converted pre-tax amounts were withdrawn to process the Roth Conversion. This Section does not expand or eliminate any withdrawal rights otherwise provided for under the Plan.

IN WITNESS WHEREOF, the Employer has caused this First Amendment to the Plan to be executed by its duly authorized representative this 17th day of December, 2019.

ONEIDA NATION

By: A. J. Barta

Its: Chief Financial Officer

**SECOND AMENDMENT
TO THE
ONEIDA NATION
GOVERNMENTAL 401(K) PLAN**

Effective January 1, 1992, the Oneida Nation, a federally recognized Tribal government (the “Nation”) established the Oneida Tribe of Indians of Wisconsin Profit Sharing Plan, now known as the Oneida Nation Governmental 401(k) Plan (the “Plan”). The Plan was amended effective January 1, 1997 to include a Code Section 401(k) elective deferral arrangement. The Plan was amended on multiple occasions thereafter and received its most recent favorable determination letter from the Internal Revenue Service on October 23, 2012. Effective April 1, 2011, the Plan was amended and restated in its entirety using a Transamerica Retirement Solutions Corporation Volume Submitter 401(k) Profit Sharing Plan. Effective January 1, 2019, the Plan was again amended and restated in the form of an individually designed Plan document. The Plan was amended on one subsequent occasion. By this instrument, the Nation intends to document a partial termination of the Plan that occurred in 2020, to document legislative changes relating to Coronavirus-Related Distributions and required minimum distributions, and to make certain design changes effective January 1, 2022.

1. Except as set forth herein, the provisions of this Second Amendment shall be effective as of January 1, 2022.

2. This Amendment shall amend only those sections of the Plan set forth herein, and those sections not amended shall remain in full force and effect.

3. Section 2.1(y) of the Plan (Definitions; Normal Retirement Age) hereby is amended and restated in its entirety as follows:

(y) “NORMAL RETIREMENT AGE” - Effective January 1, 2022, the date on which a Participant attains the age of fifty-nine and one-half (59 ½) years.

4. Section 7.1(b)(6) of the Plan (Full Vesting; Vesting in the Employer Contributions Accounts) hereby is amended and restated in its entirety as follows:

(6) Subject to Section 7.2(d), the completion of six (6) Years of Service or, effective as of January 1, 2022, the completion of three (3) Years of Service.

5. Section 7.2 of the Plan (Determination of Vested Interest in Employer Contributions Accounts in the Event of Separation from Employment) hereby is amended by adding the following paragraph (d) to the end thereof to read as follows:

(d) COVID-19 RELATED PARTIAL TERMINATION. During the period from January 1, 2020 through March 31, 2021, the Plan experienced a partial termination as the result of employment terminations occurring during the COVID-19 pandemic. In accordance with Section 14.3(c) and notwithstanding any provision of the Plan to the contrary, each Participant who separated from employment with the Nation during the period from January 1, 2020 through March 31, 2021, on a voluntary or involuntary basis, is fully vested in their Employer Contributions Accounts as of the Participant's date of separation. Any forfeitures previously removed from the account of any Participant who is impacted by the partial termination shall be restored as soon as administratively feasible. In the event that a Participant who is impacted by the partial termination is rehired by the Nation, any Employer Contributions made to the Plan on behalf of the Participant after the date of rehire shall be fully vested and nonforfeitable, regardless of the vesting schedule then in effect under the Plan.

6. Section 7.2(a) of the Plan (Determination of Vested Interest in Employer Contributions Accounts in the Event of Separation from Employment; Vesting Schedule for Employer Contributions) hereby is amended and restated in its entirety as follows:

(a) VESTING SCHEDULE FOR EMPLOYER CONTRIBUTIONS ACCOUNTS. If a Participant separates from employment with the Employer at a time when the Participant is not fully vested in the amounts credited to or allocable to his Employer Matching Contributions Accounts, the Participant's vested interest in his Employer Matching Contributions Accounts shall be determined in accordance with the applicable schedule set forth below, subject to the provisions of Section 7.2(d).

(1) Separations from Employment Occurring Prior to January 1, 2022:

<u>Years of Service</u>	<u>Vested Percentage of Employer Contributions Account</u>
Less than two	0%
At least two, less than three	20%
At least three, less than four	40%
At least four, less than five	60%
At least five, less than six	80%
Six or more	100%

(2) Separations from Employment Occurring On or After January 1, 2022:

<u>Years of Service</u>	<u>Vested Percentage of Employer Contributions Account</u>
Less than one	0%
At least one, less than two	25%
At least two, less than three	50%
Three or more	100%

(3) Rehire Rule. Any Participant who separated from employment prior to January 1, 2022 and who is rehired by the Nation on or after January 1, 2022 shall be subject to the vesting schedule set forth in subparagraph (2) above with regard to Employer Contributions made on behalf of the Participant after the date of rehire. The rehire rule stated in the preceding sentence shall not apply to any Participant who is subject to the partial termination rules of Section 7.2(d), and such Participants shall remain fully vested during any subsequent periods of employment.

7. Section 9.1(a) of the Plan (Hardship Withdrawals; General Rule) hereby is amended and restated in its entirety as follows:

(a) GENERAL RULE. Effective January 1, 2022 and subject to Section 9.4 below, an Employee may request a withdrawal of their vested interest in the Pre-Tax Contributions Account, Roth 401(k) Contributions Account, Rollover Contributions Account, Roth 401(k) Rollover Contribution Account, Employer Matching Contributions Account and Employer Profit Sharing Account on the basis of hardship; provided, however, that any earnings credited to a Participant's Pre-Tax Contributions Account or Roth 401(k) Contributions Account may not be included in a hardship withdrawal.

8. Section 9.5 of the Plan (In-Service Withdrawals; Normal Retirement Age Withdrawals) hereby is amended and restated in its entirety as follows:

9.5. NORMAL RETIREMENT AGE WITHDRAWALS.

Subject to Section 9.4, a Participant who has reached his Normal Retirement Age may elect to withdraw all or any portion of the vested balance of his Accounts in the Plan.

9. Article IX of the Plan (In-Service Withdrawals) hereby is amended to add a new Section 9.6 to the end thereof:

9.6. CARES ACT CORONAVIRUS-RELATED DISTRIBUTIONS.

Effective April 16, 2020 or as soon thereafter as feasible, Coronavirus-Related Distributions ("CRDs") shall be made available to Plan Participants in accordance with Section 2202 of the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), the guidance published by the Treasury Department pursuant to Section 2202 of the CARES Act and the provisions of this Section 9.6. CRDs shall be available with regard to all vested contributions and earnings allocated to a Participant's Account. Eligibility for CRDs shall be determined in accordance with Section 2202(a)(4)(A)(ii) of the CARES Act, including the expanded eligibility conditions published by the Secretary of the Treasury in IRS Notice 2020-50 and subsequent guidance. No Participant shall receive CRDs from the Plan that exceed, in the aggregate, One Hundred Thousand Dollars (\$100,000.00) or the total value of the Participant's vested Accounts in the Plan, whichever is less. CRDs taken from the Plan shall not be subject to the eligible rollover distribution provisions of Section 10.6 of the Plan, but CRDs taken from the Plan and from other tax-qualified retirement plans that are eligible for tax-free rollover treatment under Code § 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16) shall be permitted to be contributed to the Plan as Rollover Contributions, provided that the requirements of Section 4.6 of the Plan are satisfied. CRD availability shall terminate under the Plan on December 31, 2020. The Employer reserves the right to make further amendments to the Plan to document this CRD feature in accordance with regulatory and administrative guidance published pursuant to Section 2202 of the CARES Act.

10. Section 10.4(b) of the Plan (Method of Distribution; Optional Forms of Payment) hereby is amended and restated in its entirety as follows:

(b) OPTIONAL FORMS OF PAYMENT.

(i) Partial Distribution. A Participant may elect to receive a partial distribution of his vested Plan Account balance, payable in the form of a lump sum payment. Partial distributions may be subject to reasonable administrative limitations determined by the Plan Administrator on a uniform and nondiscriminatory basis. A partial distribution elected by the Participant can be combined with one or more future partial distributions or a monthly installment distribution schedule structured in accordance with subparagraph (ii) below.

(ii) Monthly Installments. Effective January 1, 2022, a Participant may elect to receive distribution of his vested Plan Account balance in the form of monthly installments. Monthly installments shall be made in substantially nonincreasing amounts over a period not to exceed the life expectancy of the Participant or the joint life expectancies of the Participant and Beneficiary; provided, however, that such installment method of distribution may (as permitted by the Plan Administrator) be

revised or terminated and followed by a full distribution of the vested Account on a specified date that is permissible under the Code. Until the Accounts of the Participant are exhausted by such installment payments, the Participant's Accounts shall participate in the earnings and losses of the Trust Fund. All installment distribution schedules shall be administered in accordance with the requirements of Section 401(a)(9) of the Code. The Participant shall have sole responsibility for, and the Nation, the Business Committee and the Plan Administrator shall have no liability for, any adverse tax implications resulting from changes to an installment schedule, such as the application of an early withdrawal penalty pursuant to Section 72 of the Code.

11. Section 10.5 of the Plan (Minimum Required Distributions) hereby is amended by adding a new paragraph (g) to the end thereof:

(g) SUSPENSION OF 2020 DISTRIBUTIONS. Notwithstanding any provision of the foregoing to the contrary, a Participant or Beneficiary who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a participant with a required beginning date of April 1, 2021) but for the enactment of section 401(a)(9)(I) of the Code (the "2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2020 RMDs, or (2) one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancies) of the participant and the participant's designated beneficiary, or for a period of at least 10 years (the "Extended 2020 RMDs"), will not receive those distributions unless the Participant or Beneficiary chooses to receive such distributions in accordance with the policies and procedures of the Plan Administrator. In addition, notwithstanding Section 10.6 of the Plan, and solely for purposes of applying the direct rollover provisions of the Plan, 2020 RMDs or Extended 2020 RMDs will be treated as eligible rollover distributions.

12. Section 10.5(d)(5) of the Plan (Minimum Required Distributions; Definitions; Required Beginning Date) hereby is amended and restated in its entirety as follows:

(5) REQUIRED BEGINNING DATE. For Participants who attained the age of seventy and one-half (70 ½) years prior to January 1, 2020, the required beginning date shall be April 1st of the calendar year following the later of (A) the calendar year in which the Participant attains the age of seventy and one-half (70 ½) years or, if later, (B) the calendar year in which the Participant retires. For Participants who did not attain the age of seventy and one-half (70 ½) years prior to January 1, 2020, the required beginning date shall be April 1st of the calendar year following the later of (A) the calendar year in which the Participant attains the age of seventy-two (72) years or, if later, (B) the calendar year in which the Participant retires.

IN WITNESS WHEREOF, the Nation has caused this Second Amendment to the Plan to be executed by its duly authorized representative this 2nd day of December, 2021.

ONEIDA NATION

By: _____

Title: Asst. Chief Financial Officer