

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2011

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
Commission File No. 000-50404

LKQ CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)
500 West Madison Street,
Suite 2800
Chicago, Illinois
(Address of principal executive offices)

36-4215970
(I.R.S. Employer
Identification Number)

60661
(Zip Code)

Registrant's telephone number, including area code: (312) 621-1950
Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class
Common Stock, par value \$.01 per share

Name of each exchange on which registered
NASDAQ Global Select Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as described in Rule 12b-2 of the Exchange Act). Yes No

As of June 30, 2011, there were 140,255,865 shares of common stock outstanding held by stockholders who were not affiliates (as defined by regulations of the Securities and Exchange Commission) of the registrant, and the aggregate market value of such shares was approximately \$3.7 billion (based on the closing sale price on the NASDAQ Global Select Market on June 30, 2011). The number of outstanding shares of the registrant's common stock as of February 17, 2012 was 147,265,959.

Documents Incorporated by Reference

Those sections or portions of the registrant's proxy statement for the Annual Meeting of Stockholders to be held on May 7, 2012, described in Part III hereof, are incorporated by reference in this report.

SPECIAL NOTE ON FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K includes forward-looking statements. Words such as “may,” “will,” “plan,” “should,” “expect,” “anticipate,” “believe,” “if,” “estimate,” “intend,” “project” and similar words or expressions are used to identify these forward-looking statements. We have based these forward-looking statements on our current expectations and projections about future events. However, these forward-looking statements are subject to risks, uncertainties, assumptions and other factors that may cause our actual results, performance or achievements to be materially different. These factors include, among other things:

- uncertainty as to changes in North American and European general economic activity and the impact of these changes on the demand for our products and our ability to obtain financing for operations;
- fluctuations in the pricing of new original equipment manufacturer (“OEM”) replacement products;
- the availability and cost of our inventory;
- variations in vehicle accident rates or miles driven;
- changes in state or federal laws or regulations affecting our business;
- changes in the types of replacement parts that insurance carriers will accept in the repair process;
- changes in the demand for our products and the supply of our inventory due to severity of weather and seasonality of weather patterns;
- increasing competition in the automotive parts industry;
- uncertainty as to the impact on our industry of any terrorist attacks or responses to terrorist attacks;
- our ability to operate within the limitations imposed by financing arrangements;
- our ability to obtain financing on acceptable terms to finance our growth;
- declines in the values of our assets;
- fluctuations in fuel and other commodity prices;
- fluctuations in the prices of scrap metal and other metals;
- our ability to develop and implement the operational and financial systems needed to manage our operations;
- our ability to integrate and successfully operate acquired companies and any companies acquired in the future and the risks associated with these companies;
- claims by OEMs or others that attempt to restrict or eliminate the sale of aftermarket products;
- termination of business relationships with insurance companies that promote the use of our products;
- product liability claims by the end users of our products or claims by other parties who we have promised to indemnify for product liability matters;
- currency fluctuations in the U.S. dollar versus the pound sterling, the Canadian dollar, the Mexican peso and the Taiwan dollar;
- periodic adjustments to estimated contingent purchase price amounts; and
- instability in regions in which we operate, such as Mexico, that can affect our supply of certain products.

Other matters set forth in this Annual Report may also cause our actual future results to differ materially from these forward-looking statements. We cannot assure you that our expectations will prove to be correct. In

addition, all subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements mentioned above. You should not place undue reliance on these forward-looking statements. All of these forward-looking statements are based on our expectations as of the date of this Annual Report. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

Copies of our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 are available free of charge through our website (www.lkqcorp.com) as soon as reasonably practicable after we electronically file the material with, or furnish it to, the Securities and Exchange Commission.

ITEM 1. BUSINESS

OVERVIEW

LKQ Corporation (“LKQ” or the “Company”) provides replacement parts, components and systems needed to repair vehicles (cars and trucks). Buyers of vehicle replacement products have the option to purchase from primarily five sources: new products produced by original equipment manufacturers (“OEMs”), which are commonly known as OEM products; new products produced by companies other than the OEMs, which are sometimes referred to as “aftermarket” products; recycled products originally produced by OEMs, which we refer to as recycled products; used products that have been refurbished; and used products that have been remanufactured.

We distribute a variety of products to collision and mechanical repair shops, including aftermarket collision and mechanical products, recycled collision and mechanical products, refurbished collision replacement products such as wheels, bumper covers and lights, and remanufactured engines. Collectively, we refer to our products as alternative parts. We are the nation’s largest provider of alternative vehicle collision replacement products, and a leading provider of alternative vehicle mechanical replacement products. Our sales, processing, and distribution facilities reach most major markets in the U.S. and Canada. We expanded our wholesale operations effective October 1, 2011 with our acquisition of Euro Car Parts Holdings Limited (“ECP”), the largest distributor of automotive aftermarket products in the United Kingdom. In addition to our wholesale operations, we operate self service retail facilities that sell recycled automotive products. We also sell recycled heavy-duty truck products and used heavy-duty trucks. We have organized our businesses into four operating segments: Wholesale—North America; Wholesale—Europe; Self Service; and Heavy-Duty Truck.

We obtain the majority of our aftermarket inventory from auto parts manufacturers and distributors based in the U.S., Taiwan, Europe and China. We procure recycled automotive products mainly by purchasing salvage vehicles, typically severely damaged by collisions and primarily sold at salvage auctions or pools, and then dismantling and inventorying the parts. The refurbished and remanufactured products that we sell, such as wheels, bumper covers, lights and engines, originate from parts from the salvage vehicles bought at auctions, parts received in trade at collision shops purchasing replacement products from us, and damaged parts bought through bulk purchases from core sales companies that collect damaged parts.

The majority of our products and services are sold to collision repair shops, also known as body shops, and mechanical repair shops. We indirectly rely on insurance companies, which ultimately pay for the majority of collision repairs of insured vehicles, to help drive demand. Insurance companies tend to exert significant influence in the vehicle repair decision. Because of their importance to the process, we have formed business relationships with certain insurance companies in North America in which we are designated a preferred products supplier, and we are in the process of establishing business relationships with certain insurance companies in Europe.

We provide customers with a value proposition that includes high quality products at lower cost than new OEM products, extensive product availability due to our expansive distribution network, and responsive service and quick delivery. The breadth of our alternative parts offerings allows us to serve as a “one-stop” solution for our customers looking for the most cost effective way to provide quality repairs.

We strive to be environmentally responsible. Our recycled automotive products provide an alternative to the manufacture of new products, which would require the expenditure of significantly more resources and energy and would generate a substantial amount of additional pollution. In addition, we save landfill space because the parts that we recycle would otherwise be discarded. We also collect materials, such as metals, plastics, fuel and motor oil, from the salvage vehicles that we procure, and use them in our operations or sell them to other users.

HISTORY

Since our formation in 1998, we have grown through internal development and over 130 acquisitions. Today, LKQ is the only supplier of aftermarket and recycled automobile products for the collision and mechanical repair industry with a network and presence spanning the U.S. and Canada. With our acquisition of ECP in 2011, we are also the largest supplier of automotive aftermarket products reaching most major markets in the U.K.

Initially formed through the combination of a number of wholesale recycled products businesses located in Florida, Michigan, Ohio and Wisconsin, LKQ grew to be a leading source for recycled auto collision and mechanical products. We subsequently expanded through acquisitions of aftermarket, recycled, refurbished and remanufactured product suppliers and manufacturers, and also expanded into the self service retail business and heavy-duty truck industry. The most significant increase to our business was through the acquisition of Keystone Automotive Industries, Inc. in October 2007, which, at the time of acquisition, was the leading domestic distributor of aftermarket products, including collision replacement products, paint products, refurbished steel bumpers, bumper covers and alloy wheels.

Effective October 1, 2011, we acquired ECP, which marks our entry into the European automotive aftermarket business. ECP operates out of 90 branches, supported by eight regional hubs and a national distribution center from which multiple deliveries are made each day. ECP’s product offerings are primarily focused on automotive aftermarket mechanical products, many of which are sourced from the same suppliers that provide products to the OEMs. The expansion of our geographic presence beyond North America into the European market offers an opportunity to us as that market has historically had a low penetration of alternative collision parts.

In addition to our acquisition of ECP, we made 20 acquisitions in North America in 2011 (12 wholesale businesses, five recycled heavy-duty truck products businesses and three self service retail operations). Our acquisitions included the purchase of two engine remanufacturers, which expanded our presence in the remanufacturing industry that we entered in 2010. Additionally, our acquisition of an automotive heating and cooling component distributor supplements our expansion into the automotive heating and cooling aftermarket products market. Our North American wholesale business acquisitions also included the purchase of the U.S. vehicle refinish paint distribution business of Akzo Nobel Automotive and Aerospace Coatings (the “Akzo Nobel paint business”), which allowed us to increase our paint and related product offerings and expand our geographic presence in the automotive paint market. Our other 2011 acquisitions enabled us to expand our geographic presence and enter new markets.

We expect to make additional strategic acquisitions in 2012 as we continue to build an integrated distribution network offering a broad range of alternative parts.

STRATEGY

We are focused on creating economic value for our stockholders by enhancing our position as a leading source for alternative collision and mechanical repair products, and by expanding into other product lines and

businesses that may benefit from our operating strengths, such as the engine remanufacturing business. We believe a supply network with a broad inventory of quality alternative collision and mechanical repair products, high fulfillment rates and superior customer service will provide us with a competitive advantage. Other than OEMs, the competition in the markets that we serve is extremely fragmented and the supply of products tends to be localized, often leading to low fulfillment rates, particularly with recycled products. In North America, the distribution channels for aftermarket and refurbished products have historically been distinct and separate from those for recycled and remanufactured products despite serving the same customer segment. We provide value to our customers by bringing these two channels together to provide a broader product offering. To execute our strategy, we are expanding our network of dismantling plants and warehouses in major metropolitan areas and employing a distribution system that allows for order fulfillment from regional warehouses located across the U.S. and Canada. By increasing local inventory levels and expanding our network to provide timely access to a greater range of parts, we have increased fulfillment rates beyond the levels that we believe most of our competitors realize, particularly for recycled products. We believe opportunities exist beyond our North American operations to introduce the benefits of an integrated distribution network that supplies alternative parts. Our acquisition of ECP is expected to provide a platform to execute our strategy in the U.K.

Sources of high quality, reliable alternatives to OEM products are important to insurance companies and to our direct customers as they seek to control repair costs. Lower parts costs and quicker completion of orders save money and reduce cycle times. We believe this strategy is applicable to both the automobile and heavy-duty truck markets. In order to execute this strategy and build on our progress thus far, we will continue to seek to expand into new markets and to improve penetration both organically and through acquisitions in targeted markets.

National network in place

LKQ has invested significant capital to develop a network of alternative parts facilities across the U.S. and Canada. The difficulty and time required to obtain proper zoning, as well as dismantling and other environmental permits necessary to operate newly-sited recycled product facilities, would make establishing a new network of locations a challenge for a competitor. In addition, there are difficulties associated with recruiting and hiring an experienced management team that has strong industry knowledge.

We believe there are growth opportunities in new primary and secondary markets in the U.S. and Canada. We intend to expand our market coverage through a combination of internal development and acquisitions in new regions and adjacent markets. Our broad network allows us to initially enter new, adjacent markets by establishing local redistribution facilities, avoiding the need for significant upfront capital outlays to establish local dismantling capabilities and inventories.

Our acquisition of ECP in the fourth quarter of 2011 provides us with an established distribution network reaching most major markets in the U.K. Similar to the development of LKQ's North American business, we believe this network provides an ideal platform to us as we explore opportunities to expand into new markets and complementary product lines in Europe.

Strong business relationships

We have developed business relationships with automobile insurance companies, collision and mechanical repair shops, suppliers and other industry participants. We believe that insurance companies, as payers for many repairs, are increasingly taking more active roles in the selection of alternative replacement products for vehicle repairs in order to contain the repair portion of the claims costs. On behalf of certain insurance companies, we provide a review of vehicle repair estimates so they may assess the opportunity to increase usage of alternative products in the repair process, thereby reducing their costs. Our employees also provide quotes for our products to assist several insurance companies with their estimate and settlement processes. We also work with insurance companies and vehicle manufacturers to procure salvage vehicles directly from them on a selected basis, which

provides us with an additional source of supply and offers lower transaction costs to sellers of low value salvage vehicles. We believe we are positioned to take advantage of the increasing importance these industry participants have in the repair process and will continue to look for ways to enhance our relationships with them.

We provide quality assurance programs that offer additional product support to auto insurance companies. These product support programs identify specific subsets of aftermarket products by vendor and product type that can be used in the repair of vehicles that these companies insure. The programs typically offer aftermarket products that have been produced by manufacturers certified by a third party testing lab. We may provide additional validation of the quality of the products beyond our standard warranties, and identification details that make the products traceable back to a manufacturer's specific production run.

To strengthen our relationship with collision shops, we have developed "Keyless," a program that enables collision repair shops to link their estimating systems with our aftermarket and recycled inventory. It is compatible with all of the major estimating systems and provides real-time inventory availability. The system encourages the use of alternative products by indicating to the collision shop the availability of applicable alternative products at the time of the estimate. It also provides demand information to our purchasing department and offers sales leads for our sales representatives.

Technology driven business processes

We focus on technology development as a way to support our competitive advantage. We believe that we can more cost effectively leverage our data to make better business decisions than our smaller competitors. We continue to develop our technology to better manage and analyze our inventory, assist our salespeople with up-to-date pricing and availability of our products, and further enhance our inventory procurement process. For example, our bidding specialists responsible for procuring vehicles are equipped with handheld computing devices that compare the vehicles at the salvage auctions to our current inventory, historical demand, and recent average prices to arrive at an estimated maximum bid. This bidding system reduces the likelihood of purchasing unneeded parts that might result in obsolete inventory.

We deploy inventory management systems at our facilities that are similar to those used by leading distribution companies. We make extensive use of bar code technology and wireless data transmission to track parts from the time a vehicle or product arrives at a facility to its placement on a truck for delivery to the customer. In 2010, we completed the implementation of our LKQ[®] software program at our domestic locations. LKQ[®] is a proprietary program that provides our sales representatives with information on availability of aftermarket inventory as well as recycled inventory to better address our wholesale customers' alternative parts needs and improve our fulfillment rates. Also in 2010, we completed the implementation of a yard management system for our heavy-duty truck operations. This system provides visibility across our plants, allowing for improved sales by reducing lost sales due to stock-outs. In 2011, we completed the implementation of a standardized point of sale system for our self service locations. Through increased visibility to parts sales across the network, we have been able to respond more quickly to changes in demand and leverage our visibility to price changes across our self service locations. Our newly acquired wholesale business in the U.K. uses an integrated inventory management system that provides up-to-the-minute information on available stock by location to ensure availability of high-demand inventory. Based on daily sales activity, the system directs the needed overnight deliveries to replenish stock levels among the national distribution center, hubs and branch locations.

Demand driven procurement

We believe efficient procurement of aftermarket products and salvage vehicles is critical to the growth of the operating results and cash flow of our business. We use information systems and proprietary methodologies to help us identify high demand aftermarket and recycled products. Our aftermarket inventory systems track products sold and sales lost due to a lack of inventory, and make purchase recommendations. The inventory

systems also recommend purchases and transfers based on the extent and location of demand. Our buying team reviews the recommendations and places orders accordingly. When we procure aftermarket products or refurbish collision replacement products such as wheels, bumper covers and lights, we focus on products that are in the most demand by the insured repair market. Our most popular aftermarket products are collision replacement products, such as hoods and fenders, head lamps, tail lamps, and bumper covers. Because lead times may take 45 days or more on imported products, sales volume and in-stock inventory are important factors in the procurement process.

Our information systems prioritize and recommend bid prices of the salvage vehicles we evaluate for purchase. Our processes and systems help to identify with a high degree of accuracy the value of the parts that can be recycled on a salvage vehicle and recommend a maximum purchase price to achieve our target profitability from the resale of the recycled products. We also use historical sales records of vehicles by model and year to estimate the demand for our products. Combining this information with proprietary data that aggregate customer requests for products, we are able to source aftermarket products and salvage vehicles at prices that we believe will allow us to sell products profitably.

High fulfillment rates

We have increased local inventory levels and found that it has improved our customer service and allowed for faster deliveries. Improving local order fulfillment rates reduces transfer costs and delivery times, and improves customer satisfaction. Our ability to share inventory on a regional basis increases the availability of replacement products and also helps us to fill a higher percentage of our customers' requests. We have developed regional trading zones within which we make our inventory available to our local facilities, mostly via overnight product transfers. We manage our purchasing and recycled product inventory on a regional basis to enhance the availability of the products that we believe will be in the highest demand within each region. We believe that our higher than industry average fulfillment rates distinguish us from our competition.

Broad product offering

The breadth and depth of our inventory reinforces LKQ's ability to provide a "one-stop" solution for our customers' alternative vehicle replacement product needs. Customers place a high value on the availability of a broad range of vehicle replacement products. We are able to provide the collision and mechanical repair industry with premium products at costs typically 20% to 50% below new OEM replacement products. The availability of alternative products means that automobiles can be repaired at lower costs and contributes to cars being repaired rather than designated as 'total losses' by insurance companies. In fact, many insurance companies in North America will not authorize the use of higher cost, new OEM replacement products if alternative products are available. Our ability to supply these products gives insurance companies the confidence to designate LKQ as the preferred supplier for their repair shops. With our distribution network that reaches the major markets in the U.S. and Canada, combined with our extensive range of products, we believe we are the only supplier that is able to support the insurance industry in this manner. We believe we will be positioned to provide similar services to the insurance industry in the U.K. as we expand our collision product offerings and continue to build the national distribution network of our recently acquired U.K. operations.

Our aftermarket product offering is particularly broad, with more than 86,000 SKUs sold in North America in 2011. In order to address the multiple needs of our aftermarket customers, we offer our Platinum Plus line of high quality products with lifetime warranties, our Value Line of aftermarket products when cost is the main factor for vehicle repairs, and products certified by independent organizations such as the Certified Automotive Parts Association ("CAPA") and NSF International ("NSF"). Our 2011 acquisition of the Akzo Nobel paint business allowed us to expand our geographic range in aftermarket automotive paint to better meet our customers' repair needs. We also offer other repair materials, such as tape, sandpaper, paint guns and frame racks, so that our customers can purchase these at the same time as they are ordering their automotive repair

products. Our U.K. operations also offer a broad range of products, with more than 121,000 individual SKUs sold in 2011.

One call away

To execute our strategy of offering a broad inventory with high fulfillment rates, we offer our customers the choice of aftermarket or recycled products. For many parts, we also offer refurbished or remanufactured product options. If, for example, a customer has a damaged bumper, we may offer that customer the choice of a recycled bumper, a new aftermarket bumper, or a refurbished bumper. Because recycled products are in limited supply, our ability to offer additional alternative product options increases our fulfillment rates and customer satisfaction. Historically, the distribution channels for aftermarket and refurbished products have been separate from those for recycled and remanufactured products; however, we are combining these channels through the sharing of warehousing, inventory, sales and distribution systems so that our repair shop customers need only one source of supply for their alternative repair products.

WHOLESALE AUTO PRODUCTS—NORTH AMERICA

Our wholesale automobile product operations in North America are organized by geographic regions serving the U.S. and Canada that sell all four product types to collision and mechanical automobile repair businesses. As of December 31, 2011, these wholesale operations conducted business from more than 290 facilities.

As we have combined the distribution channels for our alternative parts offerings, we also leverage our facility and warehouse costs and improve local product availability by locating multiple product operations together. Our aftermarket product operations may include a combination of sales, warehousing and distribution, and in many cases will be co-located with our refurbishing operations. Our salvage operations typically have processing, sales, distribution and administrative operations on site, indoor and outdoor storage areas, and include a large warehouse with multiple bays to dismantle vehicles. Our engine remanufacturing operations, which we acquired in the fourth quarter of 2010 and in 2011, are conducted primarily at our facility in Mexico, with sales, warehousing and distribution operations in the U.S.

Wholesale Aftermarket Products

Our 2011 sales included more than 86,000 SKUs of aftermarket collision products and repair materials for the most common models of domestic and foreign automobiles and light trucks, generally for the 15 most recent model years. Our principal aftermarket product types consist of those most frequently damaged in collisions, including automotive body panels, bumper covers and lights. In 2011, our expansion in complementary product types, such as cooling products and paint, contributed to the increase in our available products and has allowed us to better meet our customers' repair needs. The sources for our aftermarket products are both foreign and domestic manufacturers and distributors.

Aftermarket products provide the collision repair industry with quality products at prices well below new OEM replacement products. Lower costs may help insurers contain collision repair costs, and may result in cars being considered repairable rather than categorized as total losses.

We distribute paint and other materials used in repairing damaged vehicles, including sandpaper, abrasives, masking products and plastic filler. The paint and other materials distributed by us are purchased from numerous suppliers in the U.S. and Canada. Certain of these products are distributed under the brand "Keystone."

Platinum Plus is our exclusive brand offered in the Keystone product line of aftermarket products. It offers high quality products at lower costs than new OEM replacement products. The Platinum Plus products are held to high quality standards and tested by quality teams. We provide a warranty for as long as a consumer owns the vehicle on which the product was installed. Many of our Platinum Plus products are used for repairs that are ultimately paid for by insurance companies and are part of our quality assurance programs.

CAPA and NSF are associations that evaluate the functional equivalence of aftermarket collision replacement products to OEM collision replacement products. Members of CAPA and NSF include insurance companies, product distributors (including LKQ), collision repair shops and consumers. CAPA and NSF develop engineering specifications for aftermarket collision replacement products based upon examinations of OEM products; certify the factories, manufacturing processes and quality control procedures used by independent manufacturers; and certify the materials, fit and finish of specific aftermarket collision replacement products.

In 2011, LKQ became the first automotive parts distributor to become certified under the new NSF International Automotive Parts Distributor Certification Program, which addresses the needs of collision repair shops and insurers by maintaining quality management systems to address part traceability, service and quality. This certification program complements the existing parts certification program with NSF under which LKQ has a broad range of certified automotive collision replacement parts. Many major insurance companies have adopted policies recommending or requiring the use of products certified by CAPA or NSF when available. A number of CAPA and NSF certified products are also marketed under the Platinum Plus brand.

In addition to distributing parts certified by CAPA and NSF, we actively participate with CAPA, NSF, insurance companies and consumer groups in encouraging independent manufacturers of collision replacement products to seek certifications from these organizations.

We have developed a product line called "Value Line" for more value conscious, often self-pay, consumers. Our Value Line products offer quality products at reasonable prices, providing additional choices for repairs or rebuilding of vehicles. The Value Line product line includes most product categories.

Procurement of Inventory

The aftermarket products we distribute are purchased from independent manufacturers and distributors located primarily in the U.S. and Taiwan. In 2011, approximately 53% of our aftermarket purchases were made from our top eight vendors, with our largest vendor providing approximately 12% of our inventory. We believe we are one of the largest customers of each of these suppliers. No other supplier provided more than 5% of our supply of aftermarket products. We purchased approximately 44% of our aftermarket products directly from manufacturers in Taiwan and other Asian countries. Approximately 56% of our aftermarket products were purchased from vendors located in the U.S. and Canada. However, we believe the majority of these products were manufactured in Taiwan, Mexico or other foreign countries.

We benefit from an automated procurement system for aftermarket goods that makes order and inventory transfer recommendations using product sales and data for lost sales due to stockouts. Buyers review the system's recommendations and then place purchase orders or arrange for a redistribution of inventory to areas of higher demand. For new products, we use vehicle volume and registrations by state to influence what new products should be ordered and where the stock should be located. Typically six months after the products are introduced, the automated system has sufficient data to make order recommendations.

We have business arrangements with manufacturers to produce our Platinum Plus products. These agreements automatically renew for additional 12 month periods unless written notice is given. While we compete with other distributors for production capacity, we believe that our sources of supply and our relationships with our suppliers are satisfactory.

We usually receive orders within ten days from domestic suppliers. Orders placed with foreign manufacturers generally are received within 45 to 60 days.

Foreign orders typically are shipped in sea containers directly to over half of our aftermarket locations. We have 24 regional hubs and three distribution centers. The hub warehouses act as sources for our other non-container-direct aftermarket warehouse locations, and serve as the central stocking point of all slower moving items. This structure is designed to maximize our fulfillment rates as smaller branches can have a high fill-rate of next day availability.

Wholesale Recycled Products

Wholesale recycled collision and mechanical products provide high quality, lower-price repair options. Our most popular recycled products include engines, transmissions, doors, front end assemblies, trunk lids, bumper assemblies, head and tail lamp assemblies and mirrors. Some insurance companies mandate that the recycled products must be of the same model year or newer as the vehicle being repaired. As a result, the majority of the products we sell are from vehicles not more than ten years of age. We have adopted the industry's grading system based on the condition of the product, and factor product grades into our pricing decisions. Unlike aftermarket products that are individually boxed, recycled products are most frequently sold as subassemblies or as multiple parts already put together. Installing recycled products often means that collision shops not only save on product cost, but, because several products may come pre-assembled, are also able to reduce labor costs.

Procurement of Inventory

We procure recycled products for our wholesale operations by acquiring damaged or totaled vehicles. Vehicles that have been declared "total losses" typically are sold at regional salvage auctions throughout the U.S. and Canada. Salvage auctions charge fees both to the suppliers of vehicles, primarily insurance companies, and to the purchasers, such as LKQ. Additionally, we pay third parties fees to tow the vehicles from the auction to our facilities.

Over the past few years, the frequency with which vehicles are declared total losses has increased as a result, we believe, of the rise in repair costs relative to replacement cost. In 2000, approximately 9% of accident claims resulted in a total loss; by 2010, this percentage increased to 14%. As OEMs offer models that have increasingly complex safety measures such as multiple airbags and vehicle operating sensors, the cost to repair such vehicles has risen. Recently, high used car values have reduced the effect of this trend slightly.

In 2011, LKQ acquired approximately 228,000 salvage vehicles for our wholesale recycled product operations with approximately 95% purchased at salvage auctions. Prior to the scheduled auction date, our salvage buyers may preview the auctions online to investigate the vehicles to be sold and determine our interest in buying them. They obtain key information such as the model and mileage, and perform visual damage assessments to determine which parts on the targeted vehicles are recyclable. With the data from this preview, we deploy a bidding system that performs a valuation calculation for each vehicle. In order to recommend a maximum bid price, the calculation incorporates demand for a vehicle's recyclable parts, current inventory levels, average selling prices, auction costs, projected margins and instances of out-of-stock. Using this disciplined supply and demand procurement approach, we place bids on the targeted vehicles. In most cases, we attend auctions in person, although some of our purchasing is done through an online auction system.

We acquired approximately 5% of the salvage vehicles we purchased for wholesale parts in 2011 directly from insurance companies, vehicle manufacturers, and other direct sellers. These arrangements eliminate the fees charged to the buyers and sellers by the salvage auction, often providing inventory with a lower initial expenditure of capital. Direct purchase agreements, while usually beneficial, have limited applicability to our procurement because vehicle auctions provide us with the flexibility to focus on sought after vehicles based on our bidding algorithms.

Vehicle Processing

Vehicle processing for our wholesale recycled operations involves dismantling a salvage vehicle into recycled products that are ready for sale. When a salvage vehicle arrives at one of our facilities, an inventory specialist identifies, catalogs, and schedules the vehicle for dismantling. Prior to dismantling, we remove from each vehicle its fluids, Freon, and parts containing hazardous substances or precious metals such as catalytic converters. The extracted fluids are stored in bulk and subsequently sold to recyclers. In the case of gasoline, the fuel retrieved is primarily used to power our delivery vehicles. A small portion of the recycled motor oil we collect is used at certain of our plants that have high-efficiency oil burning furnaces; the balance is sold to motor oil recyclers.

When ready for dismantling, each vehicle will have an inventory report that indicates to the dismantler which parts should be removed and placed in a warehouse for future sales to customers, which parts should be collected in bulk for our refurbishing and remanufacturing operations or for sale to parts remanufacturers, and which parts have value but should remain on the vehicle until sold.

Products that are placed directly on our shelves are typically higher sales volume items such as engines, transmissions, doors, hoods, trunk lids, head and tail lamp assemblies, and front and rear bumper covers. Many of the recycled products we sell are subassemblies of multiple parts including quarter panels and front end assemblies. The subassemblies are cut from the vehicle bodies, usually using specific parameters provided by the repair shop at the time of sale.

Parts that are not in a condition to be sold as recycled products or that are in surplus supply are separated and refurbished or remanufactured internally, or otherwise sold in bulk to parts remanufacturers. If there is strong demand for products that are currently at high stock levels in our warehouses, we may choose to hold the vehicle for further dismantling at some future date when we are more likely to have a need for the parts. The holding period for partially dismantled car bodies will depend on the rack space available at the site. Once all of the parts of value have been removed, the remaining vehicle frame is crushed and sold to scrap processors.

Prior to placement on our warehouse shelves, each inventory item is given a unique bar code tag for identification and entered into our inventory tracking system. We utilize bar coding systems and wireless transmission to keep track of inventory from the time a product is removed and inventoried, to the time it is sold and put on a truck for delivery.

Refurbished and Remanufactured Products

As of December 31, 2011, we operated 34 plastic bumper and bumper cover refurbishing plants, a chrome bumper plating plant, 15 wheel plants, one light refurbishing plant and four engine remanufacturing facilities. Most of our refurbished and remanufactured products are sold through our wholesale distribution channels. The balance is sold to retail automotive stores, wholesale distributors and via internet sales.

The majority of our refurbished and remanufactured products are processed from cores obtained from salvage vehicles purchased by our recycled operations, damaged cores collected by our route delivery drivers from vehicles under repair by our customers, and from core brokers. Our sales capacity for these products is limited by the availability of cores to refurbish. In addition to the engines we remanufacture in-house, we sell some remanufactured mechanical products, such as engines and transmissions, acquired from other mechanical remanufacturers.

We began our engine remanufacturing operations through an acquisition in the fourth quarter of 2010, and further expanded these operations with two additional acquisitions in 2011. When identifying the products that we refurbish or remanufacture, we focus on products that have high demand. These products are accumulated from our salvage operations at our central core sorting facility, and are then either sent to our refurbishing or remanufacturing facilities or sold in bulk to other mechanical remanufacturers. Additionally, certain of our wheels may be sent to our smelter operations to be melted and sold as aluminum ingot.

Scrap and Other Materials

Our wholesale recycled product operations generate scrap metal and other materials that we sell to recyclers. Vehicles that have been dismantled for recycled products and “crush only” end of life vehicles acquired from other companies, including OEMs, are typically crushed using equipment on site. In other cases, we will hire mobile crushing equipment to crush the vehicles before they are transported to shredders and scrap metal processors. Damaged and unusable wheel cores are melted in our aluminum furnaces and sold to consumers of aluminum ingot and sow for the production of various automotive products, including wheels.

Customers

We sell our products to wholesale customers that include collision and mechanical repair shops and new and used car dealerships, as well as to retail customers. We also generate a portion of our revenue from scrap sales to metal recyclers. No single customer accounted for 3% or more of our revenue in 2011.

Repair Shops and Others

We sell the majority of our wholesale products to collision and mechanical repair shops. Industry reports estimate there were approximately 53,000 collision repair shops, including those owned by new car dealerships, in the U.S. in 2010. The same reports estimate there were approximately 76,000 general (including mechanical) repair garages, but excluding new car dealership service departments, in the U.S. in 2010. The majority of these customers tend to be individually-owned small businesses, although there has been a trend toward consolidation, resulting in the formation of several national and regional repair companies. We also sell our products to automobile dealerships, car rental companies and fleet management groups.

Insurance Companies

Automobile insurance companies wield significant influence on the demand for our products. While insurance companies do not pay for our products directly, they ultimately pay for the repair costs of insured vehicles in excess of any deductible amount. As a result, insurance companies often influence the types of products used in a repair.

Our presence in all major markets in the U.S. and Canada gives us a distinctive ability to service the major automobile insurance companies. Insurance companies generally operate at a national or regional level. The use of our products provides a direct benefit to these companies by lowering the cost of repairs, decreasing the time required to return the repaired vehicle to the customer, and providing a replacement product that is of high quality and comparable performance to the part replaced.

We assist insurance companies by providing high quality aftermarket, recycled, refurbished and remanufactured products to collision repair shops, especially to repair shops that are part of an insurance company's Direct Repair Program ("DRP") network. A repair shop participating in a DRP is referred potential work from the insurance company in exchange for providing assurances to the insurance company of quality, timeliness and cost. Industry reports indicate approximately 44% of collision repair shops participate in DRPs, and between 40% and 50% of a repairer's business is generated through participation in DRP networks. In 2010, the average repairer participated in approximately three DRPs, an increase from two DRPs per repairer in 2000. To meet the needs of the DRPs, professional repairers have been required to become fluent in claims handling. Our Keyless system assists these repairers by indicating the availability of alternative products as replacements for damaged OEM products. This data also helps insurance companies monitor the body shops' compliance with its DRP product guidelines that might, for instance, stipulate the use of the lowest cost products that meet quality specifications. In addition, in some markets insurance companies are able to dispose of low value total loss vehicles directly to us so they can save the transaction fees associated with selling these vehicles through salvage auctions.

Sales and Marketing

In the case of repairs paid for as a result of insurance claims, which industry publications estimate are approximately 89% of all repairs, insurance companies give collision repair shops directives as to what type of replacement products are eligible for reimbursement. Typically insurance carriers have established a hierarchy or decision tree prioritizing the types of products to be used for repairs. As an example, a protocol may require recycled products if available; if recycled products are not available, then refurbished products; and, if recycled or refurbished products are not available, aftermarket products. If none of these alternative product types is

available, the shop may then use new OEM replacement products. As a body shop looks for products for a repair, the sourcing of products typically begins with a call to one of our recycled operations or one of our competitors. Our recycled sales personnel are encouraged to capture the sale as a "one-stop shop" and, if recycled products are out of stock, to fill orders from our refurbished or aftermarket product inventory. To support these efforts, we have provided our sales staff with access to both recycled and aftermarket sales systems, and we have developed sales incentive programs that encourage cross selling throughout our wholesale operations.

As of December 31, 2011, we had approximately 1,700 full-time sales staff in our North American wholesale operating segment. The full time sales personnel are located at sales desks at our facilities or at one of the regional call centers we operate. We deploy a call routing system that redirects overflow calls to alternative call centers, typically located within the same region. We also operate two other call centers, one to support national accounts, and the other to support insurance adjusters' needs and questions. Our sales personnel are encouraged to initiate outbound calls in addition to the inbound calls they handle. Our sales staff can use customer estimates from our Keyless estimating system to generate sales leads for both aftermarket and recycled products.

We are continually reviewing and revising the pricing of wholesale products. Our pricing specialists consider factors such as recent demand levels, inventory quantity on hand and turnover rates, new OEM product prices and local competitive pricing, with the goal of optimizing revenue. We set list prices and then sell items at a discount to list, with the discount typically based on each customer's purchasing volume. We may adjust prices during the year in response to material price changes of new OEM replacement products.

We believe our commitment to stock inventory in local warehouses, supplemented by the inventory sharing system within our regional trading zones, improves our ability to meet our customers' requirements more frequently than our competitors and gives us a competitive advantage.

Distribution

We have a distribution network of over 290 wholesale plants and warehouses across the U.S. and Canada, of which 50 function as large hub or cross dock facilities. Our network of facilities allows us to develop and maintain our relationships with local repair shops while providing a level of service that is made possible by our nationwide presence. Our local presence allows us to provide daily deliveries as required by our customers, using drivers who routinely deliver to the same customers. Our sales force and local delivery drivers develop and maintain critical personal relationships with the local repair shops that benefit from access to our wide selection of products, which we are able to offer as a result of our regional inventory network.

We have developed an internal distribution network to allow our sales representatives to sell our products within regional trading zones, thus improving our ability to fulfill customer requests and accelerating inventory turnover. Each weekday we operate over 280 transfer runs between our cross dock facilities and our plants and warehouses within our regional trading zones to redistribute our alternative products for delivery on the next day. In addition, we have approximately 2,700 local delivery routes serving our customers each weekday.

Each sale results in the generation of a work order at the location housing the specific product. A dispatcher is then responsible for ensuring fulfillment accuracy, printing the final invoice, and including the product on the appropriate truck route for delivery to the customer. In markets where we offer more than one alternative product type, we have begun to integrate the delivery of multiple product types on the same delivery routes to help minimize distribution costs and improve customer service. We operate a delivery fleet of medium-sized trucks and smaller trucks and vans. Over time, our delivery vehicles will become more consistent as we reconfigure the fleet to include vehicles that can carry all four product types.

Competition

We consider all suppliers of vehicle collision and mechanical products to be competitors, including aftermarket suppliers, recycling businesses, refurbishing operations, parts remanufacturers, OEMs and internet-based suppliers. We do not consider retail chains that focus on the do-it-yourself market to be our direct competitors. We believe the principal areas of differentiation in our industry include availability of inventory, pricing, product quality and service.

The aftermarket product distribution business is highly fragmented and our competitors, other than OEMs, are generally independently owned distributors with one to three distribution centers. Similarly, we compete with domestic vehicle product recyclers, most of which are single-unit operators. In some markets, smaller competitors have organized affiliations to share marketing and distribution resources, including internet sites. We compete with alternative parts distributors on the basis of our nationwide distribution system, our product lines and inventory availability, customer service, our relationships with insurance companies, and to a lesser extent, price.

Manufacturers of new original equipment products sell the majority of automobile replacement products. We believe, however, that as the insurance and repair industries continue to recognize the advantages of aftermarket, recycled, refurbished and remanufactured products, the alternatives to new OEM replacement products will account for a larger percentage of total vehicle replacement product sales. Since 2007, alternative parts usage has increased from approximately 31% to 37% of the collision replacement product market. We compete with OEMs on the basis of price, service and product quality.

WHOLESALE AUTO PRODUCTS—EUROPE

Our European wholesale operating segment was formed in the fourth quarter of 2011 with our acquisition of ECP, the U.K.'s largest distributor of automotive aftermarket products. We operate 90 branches, supported by eight regional hubs and a national distribution center, which allows us to reach most major markets within the U.K. With its national distribution system and IT infrastructure, we believe ECP will serve as a platform to expand into complementary products to increase market penetration in this region, as well as to further develop a collision repair parts business similar to our North American wholesale operations.

Inventory

In 2011, we sold more than 121,000 SKUs of aftermarket products, primarily composed of mechanical aftermarket parts for the repair of vehicles five to 15 years old. Our top selling products include electrical products such as spark plugs and ignition coils, clutches and related parts, steering and suspension parts, and brake pads and sensors. In 2011, our top 10 suppliers represented approximately 38% of our inventory purchases, with our top supplier representing approximately 8% of our purchases. No suppliers outside of our top ten suppliers provided more than 3% of our annual purchases. The aftermarket products we distribute are purchased from vendors located primarily in the U.K. and other European countries. In 2011, we purchased approximately 70% of our aftermarket products from manufacturers in the U.K. and 19% of our products from other European countries. Approximately 11% of our products were procured from vendors located in China.

We provide value to our customers by offering aftermarket products that, in many cases, are sourced from the same suppliers used by OEMs. By working directly with the manufacturers, we are able to eliminate many intermediate steps in the parts supply chain to offer the same products for a lower price compared to OEMs. For many of our products, we also offer lower-cost lines for our customers that are more cost conscious.

Customers

We sell the majority of our products to over 32,000 professional repairers, including primarily independent mechanical repair shops and collision repair shops. In addition to our sales to repair shops, we also generate a

portion of our revenue through sales to retail customers from our branch stores, which have historically represented less than 20% of our revenue. No single customer accounted for more than 2% of our revenue in 2011.

Sales and Marketing

To place an order, our customers will generally call a sales representative at the nearest branch, or may call our central call center. Using an electronic automotive exchange and our integrated IT platform displaying inventory availability, our sales representatives can locate for our customers to the appropriate replacement part. We set list prices for our products, and then apply a discount off of list, primarily depending on each customer's purchasing volume. Customer orders are then filled from the local branch, or routed to another location as necessary to fill the order.

Similar to our North American wholesale operations, insurance companies significantly influence the purchasing decisions for collision products in the U.K. We believe the historically low alternative collision parts usage percentage, which is currently less than 10%, provides an opportunity for us in this market, particularly as insurance companies look to lower their costs. As a result, we have begun to develop business relationships with insurance companies and implement insurer-based marketing models to bring visibility to the cost savings that can be achieved through the use of alternative parts. As we continue to grow our collision parts offerings over time in this market, we believe we will be well-positioned to serve as a lower-cost alternative for insured repairs in the U.K.

Distribution

We employ a central stock replenishment system supported by our integrated IT platform to monitor historical demand, lost sales, and orders. Using this information, we are better able to appropriately stock our branches to meet customer requests. Our typical branch location holds between 10% and 20% of our available SKUs, with nightly replenishment from our national distribution center and other distribution hubs. For several of our branches, we can deliver an in-stock part within one hour. In the event that a branch does not have a requested part, the part is supplied by either the hubs or the national distribution center within 24 hours. We deliver parts to our customers on our vans or third party motorcycles with 35,000 daily deliveries, or otherwise by third party carriers.

Competition

We view all suppliers of replacement repair products as our competitors, including other alternative parts suppliers and OEMs. While we compete with all alternative parts suppliers, there are few with a distribution network reaching most major markets in the U.K. We believe we have been able to distinguish ourselves from other alternative parts suppliers primarily through our distribution network, which allows us to deliver our products quickly, as well as through our product lines and inventory availability, pricing and service. We compete with OEMs primarily on the basis of price, service and availability.

SELF SERVICE RETAIL PRODUCTS

Our self service retail operations sell parts from older cars and light trucks directly to consumers. In addition to revenue from the sale of parts, core and scrap, we charge a small admission fee to access the property. Our self service facilities typically consist of a fenced or enclosed area of several acres with vehicles stored outdoors and a retail building through which customers are able to access the yard. As of December 31, 2011, we conducted our self service retail operations from 47 facilities in North America.

Inventory

We acquire inventory for our self service retail product operations from a variety of sources, including but not limited to towing companies, municipality sales, auctions, insurance carriers, the general public and

charitable organizations. We typically procure salvage vehicles that are more than eight model years old for our self service retail product operations. These vehicles will typically be older and of lower quality than the salvage vehicles we purchase for our wholesale recycled product operations. In 2011, we purchased approximately 352,000 lower cost self service and crush only vehicles.

Processing and Placement

Vehicles are typically delivered to our locations by the seller, though in some cases, we will arrange for transportation. Once on our property, minimal labor is required to process the vehicle other than removing the fluids, catalytic converters and hazardous materials. Vehicles are then placed in the yard for customers to remove parts. The vehicle inventory is usually organized according to domestic and foreign cars (further organized by make), passenger vans and trucks. In our self service business, availability of a specific part will depend on which vehicles are currently at the site and to what extent parts may have previously been removed and sold.

Part prices are listed on regularly updated price sheets and will vary by part type, but not by make or model. For instance, four cylinder engines are priced the same amount regardless of vehicle make, model, age or condition. We usually allow customers access to vehicles for 30 to 60 days before they are crushed and sold to scrap metal processors. By maintaining a relatively short turnover period, we ensure that our inventory is continually updated with different car options or removed from the yard when the saleable parts are depleted.

Scrap and Other Materials

Our self service auto recycling operations generate scrap metal, alloys and other materials that we sell to recyclers. Vehicles that we no longer make available to the public and “crush only” vehicles acquired from other companies, including OEMs, are typically crushed using equipment on site.

Customers

The customers of our self service yards are frequently do-it-yourself mechanics, small independent repair shops servicing older vehicles and auto rebuilders. The scrap from the vehicle hulks is sold to recyclers, with whom we may also compete when procuring salvage vehicles for our operations.

Competition

There are competitors operating self service businesses in all of the markets in which we operate. In some markets, there are numerous competitors, often operating in close proximity to our operations. We try to differentiate our business by the quality of the inventory and the size and cleanliness of the property.

HEAVY-DUTY TRUCK PRODUCTS

LKQ started its heavy-duty recycled truck product operations in 2008 with the purchase of a recycler based in Houston, Texas. As of December 31, 2011, we had a total of 18 facilities in the U.S. and Canada. We began our recycled truck operations with a belief that development of a network would offer similar opportunities to those we have experienced with our wholesale recycled product operations. The development of our network is ongoing, but we have made progress toward integrating the operations and achieving synergies.

Inventory

Our inventory is comprised of used heavy- and medium-duty trucks, usually five years or older, which are purchased at salvage and truck auctions or directly from insurance companies or large fleet operators. During 2011, we purchased approximately 6,000 vehicles. Depending on the condition of the vehicles, they may be dismantled for parts or resold as running vehicles. If certain mechanical parts are damaged, such as transmissions, we may remanufacture them and offer them to our customers. The vehicles that are acquired for resale are typically special purpose or vocational use trucks such as those used for garbage pickup or cement

delivery. If requested by the sellers of the vehicles, we provide an assurance that the vehicles will be sold to foreign buyers and exported to countries for use outside of the U.S., or to domestic buyers after the vehicles have been reconditioned and modified for use other than their original purpose.

By utilizing a yard management system that we implemented in 2010, we are able to provide our yards visibility to available inventory across the network. We believe this system provides an advantage over our competitors who do not typically leverage a broad network to fulfill customer demand for products.

Customers

Customers for recycled heavy-duty truck products are often owner/operators, local cartage companies operating fleets or foreign buyers or exporters seeking low cost parts, most commonly engines and transmissions.

EMPLOYEES

As of December 31, 2011, we had approximately 17,900 employees. We are a party to a collective bargaining agreement with a union that represents 49 employees at our Totowa, New Jersey facility. Approximately 415 of our employees at our bumper refurbishing plant in Mexico and approximately 215 of our employees at our recycled parts facility in Quebec City, Canada are also represented by unions. Other than these locations, none of our employees is a member of a union or participates in other collective bargaining arrangements. We consider our employee relations to be good.

FACILITIES

In 2011, we moved our corporate headquarters to 500 West Madison Street, Chicago, Illinois 60661, from our previous address at 120 North LaSalle Street, Chicago, Illinois 60602. In addition to our corporate headquarters, we have a field support center in Nashville, Tennessee that performs certain corporate functions, including accounting, procurement and information systems support. Many of these functions were transferred to the field support center in 2011 from regional offices where they were previously performed. Our European operations maintain procurement, accounting and finance functions, as well as a central call center, in Wembley, outside of London, England. In addition to these corporate offices, we have numerous operating facilities that handle wholesale, self service retail and heavy-duty truck products. We operate out of more than 440 locations in total, a majority of which are leased. Many of our locations stock multiple product types or serve more than one function.

Included in our total locations are 90 facilities in the U.K., including the 500,000 square foot national distribution center in Tamworth that houses inventory to supply the hubs and branches of our U.K. operations, and 30 facilities in Canada, five facilities in Central America, and two facilities in Mexico.

INFORMATION TECHNOLOGY

In 2010, we completed the installation of a proprietary facility management system called LKQ x at our domestic locations that we developed for our wholesale recycled product operations to replace a third party system. The new system improves the integration of inventory with the aftermarket system and provides improved control, selling and data analysis features. We believe that a single system that presents a combined view of aftermarket, recycled, refurbished and remanufactured products helps facilitate the sales process, allows for continued implementation of standard operating procedures, and yields improved training efficiency, employee transferability, access to our national inventory database, management reporting and data storage. It also eliminates the need to create multiple versions of proprietary applications and systems support processes. The system also supports an electronic exchange process for identifying and locating parts at other select recyclers and facilitates brokered sales to fill customer orders for items not in stock.

Our North American aftermarket operations use a third party facility management system. Additional third party software packages have been implemented to leverage the centralized data and information that a single

system provides, such as a data warehouse to conduct enhanced analytics and reporting, an integrated budgeting system, an electronic data interchange tool, and eCommerce tools to enhance our online business-to-business initiatives—OrderKeystone.com and Keyless. Similarly, our aftermarket operations in the U.K. use a single integrated IT platform for our purchasing, branch stock, and finance activities, which are further supported by a distribution center system to manage inventory movement.

All of our refurbishing operations use a single facility management system. Our remanufacturing operations, which we acquired at the end of 2010 and further expanded through additional acquisitions in 2011, currently operate on three separate IT systems. We expect to integrate all of our remanufacturing operations onto one IT platform in the next couple of years.

In 2011, we completed the installation of a standardized point of sale system in our self service retail operations, which allows enhanced management reporting as well as improved system reliability. In 2010, we implemented a single enterprise system for all of our heavy-duty truck operations that supports inter-region sales to reduce the potential for lost sales due to out-of-stock parts.

The hardware that supports the systems used in our operations is located in offsite data centers. The centers are in secure environments with around-the-clock monitoring, redundant power backup, and multiple, diverse data and telecommunication routing.

We use separate third party provided software for our financial systems such as financial and budget reporting, general ledger accounting, accounts payable, payroll, and fixed assets. We currently protect our local customer, inventory, and corporate consolidated data, such as financial information, e-mail files, and other user files, with daily backups. These backups are stored off site with a third party data protection vendor.

We continually evaluate our systems with the goal of ensuring that all critical systems remain scalable and operational as our business grows.

REGULATION

Environmental Compliance

Our operations and properties, including the maintenance of our delivery vehicles, are subject to extensive federal, state and local environmental protection and health and safety laws and regulations. These environmental laws govern, among other things, the emission and discharge of hazardous materials into the ground, air, or water; exposure to hazardous materials; and the generation, handling, storage, use, treatment, identification, transportation, and disposal of industrial by-products, waste water, storm water, and mercury and other hazardous materials.

We have made and will continue to make capital and other expenditures relating to environmental matters. We have an environmental management process designed to facilitate and support our compliance with these requirements. We cannot assure you, however, that we will at all times be in complete compliance with such requirements.

Although we presently do not expect to incur any capital or other expenditures relating to environmental controls or other environmental matters in amounts that would be material to us, we may be required to make such expenditures in the future. Environmental laws are complex, change frequently and have tended to become more stringent over time. Accordingly, we cannot assure you that environmental laws will not change or become more stringent in the future in a manner that could have a material adverse effect on our business.

Contamination resulting from vehicle recycling processes can include soil and ground water contamination from the release, storage, transportation, or disposal of gasoline, motor oil, antifreeze, transmission fluid, chlorofluorocarbons ("CFCs") from air conditioners, other hazardous materials, or metals such as aluminum,

cadmium, chromium, lead, and mercury. Contamination from the refurbishment of chrome plated bumpers can occur from the release of the plating material. Contamination can migrate on-site or off-site which can increase the risk, and the amount, of any potential liability.

In addition, many of our facilities are located on or near properties with a history of industrial use that may have involved hazardous materials. As a result, some of our properties may be contaminated. Some environmental laws hold current or previous owners or operators of real property liable for the costs of cleaning up contamination, even if these owners or operators did not know of and were not responsible for such contamination. These environmental laws also impose liability on any person who disposes of, treats, or arranges for the disposal or treatment of hazardous substances, regardless of whether the affected site is owned or operated by such person, and at times can impose liability on companies deemed under law to be a successor to such person. Third parties may also make claims against owners or operators of properties, or successors to such owners or operators, for personal injuries and property damage associated with releases of hazardous or toxic substances.

When we identify a potential material environmental issue during our acquisition due diligence process, we analyze the risks, and, when appropriate, perform further environmental assessment to verify and quantify the extent of the potential contamination. Furthermore, where appropriate, we have established financial reserves for certain environmental matters. In addition, at times we, or sellers from whom we purchased a business, have undertaken remediation projects. We do not anticipate, based on currently available information and current laws, that we will incur liabilities in excess of reserves to address environmental matters. However, in the event we discover new information or if laws change, we may incur significant liabilities, which may exceed our reserves.

Title Laws

In some states, when a vehicle is deemed a total loss, a salvage title is issued. Whether states issue salvage titles is important to the supply of inventory for the vehicle recycling industry because an increase in vehicles that qualify as salvage vehicles provides greater availability and typically lowers the price of such vehicles. Currently, these titling issues are a matter of state law. In 1992, the U.S. Congress commissioned an advisory committee to study problems relating to vehicle titling, registration, and salvage. Since then, legislation has been introduced seeking to establish national uniform requirements in this area, including a uniform definition of a salvage vehicle. The vehicle recycling industry will generally favor a uniform definition, since it will avoid inconsistencies across state lines, and will generally favor a definition that expands the number of damaged vehicles that qualify as salvage. However, certain interest groups, including repair shops and some insurance associations, may oppose this type of legislation. National legislation has not yet been enacted in this area, and there can be no assurance that such legislation will be enacted in the future.

Anti-Car Theft Act

In 1992, Congress enacted the Anti-Car Theft Act to deter trafficking in stolen vehicles. The purpose of the law is to implement an electronic system to track and monitor vehicle identification numbers and major automotive parts. In January 2009, the U.S. Department of Justice implemented the portion of the system to track and monitor vehicle identification numbers. The portion of the system that would track and monitor major automotive parts would require various entities, including automotive parts recyclers like us, to inspect salvage vehicles for the purpose of collecting the part number for any "covered major part." The Department of Justice has not promulgated rules on this portion of the system, and therefore there has been no progress on the implementation of the system to track and monitor major automotive parts. However, if this system is fully implemented, the requirement to collect the information would place substantial burdens on vehicle recyclers, including us, that otherwise would not normally exist. It would place similar burdens on repair shops, which may further discourage the use by such shops of recycled products. There is no pending initiative to implement the parts registration from a law enforcement point of view. However, there is a risk that a heightened legislative concern over safety of parts might precipitate an effort to push for the implementation of such rules.

Legislation Affecting Automotive Repair Parts

Most states have laws relating to the use of aftermarket products in motor vehicle collision repair work. The provisions of these laws include consumer disclosure, vehicle owner's consent regarding the use of aftermarket products in the repair process, and the requirement to have aftermarket products certified by an independent testing organization. Some jurisdictions have laws that regulate the sale of certain recycled products that we provide, such as airbags. Additional laws of this kind may be enacted in the future. An increase in the number of states passing such legislation with prohibitions or restrictions that are more severe than current laws could have a material adverse impact on our business. Additionally, Congress could enact federal legislation restricting the use of aftermarket and recycled automotive products used in the course of collision repair.

SEASONALITY

Our operating results are subject to quarterly variations based on a variety of factors, influenced primarily by seasonal changes in weather patterns. During the winter months we tend to have higher demand for our products because there are more weather related accidents. In addition, the cost of salvage vehicles may be lower as weather related accidents generate a larger supply of total loss vehicles.

ITEM 1A. RISK FACTORS

Risks Relating to Our Business

Our operating results and financial condition have been and could continue to be adversely affected by the economic conditions in the U.S. and elsewhere.

The decline in economic conditions in the U.S. adversely impacted our business. Such conditions have resulted in fewer miles driven, fewer accident claims and a reduction of vehicle repairs. In the event that the U.S. economic conditions decline further or do not improve, we expect that our business will continue to be negatively affected. We recently expanded our operations to include the United Kingdom. To the extent that the economic conditions in the U.K. deteriorate, our new business could be negatively affected.

We face intense competition from local, national, international, and internet-based vehicle products providers, and this competition could negatively affect our business.

The vehicle replacement products industry is highly competitive and is served by numerous suppliers of OEM, recycled, aftermarket, refurbished and remanufactured products. Within each of these categories of suppliers, there are local owner-operated companies, larger regional suppliers, national and international providers, and internet-based suppliers. Providers of vehicle replacement products that have traditionally sold only certain categories of such products may decide to expand their product offerings into other categories of vehicle replacement products, which may further increase competition. Some of our current and potential competitors may have more operational expertise; greater financial, technical, manufacturing, distribution, and other resources; longer operating histories; lower cost structures; and better relationships in the insurance and vehicle repair industries, than we do. In certain regions of the U.S., local vehicle recycling companies have formed cooperative efforts to compete in the wholesale recycled products industry. As a result of these factors, our competitors may be able to provide products that we are unable to supply, provide their products at lower costs, or supply products to customers that we are unable to serve.

We believe that substantially in excess of 50% of collision parts by dollar amount are supplied by OEMs, with the balance being supplied by distributors like us. The OEMs are therefore in a position to exert pricing pressure in the marketplace. We compete with the OEMs primarily on price and to a lesser extent on service and quality. From time to time, OEMs have experimented with reducing prices on specific products to match the lower prices of alternative products. If such price reductions were to become widespread, it could have a material adverse impact on our business.

Claims by OEMs relating to aftermarket products could adversely affect our business.

OEMs have attempted to use claims of intellectual property infringement against manufacturers and distributors of aftermarket products to restrict or eliminate the sale of aftermarket products that are the subject of the claims. The OEMs have brought such claims in federal court and with the U.S. International Trade Commission.

In December 2005 and May 2008, Ford Global Technologies, LLC filed complaints with the International Trade Commission against us and others alleging that certain aftermarket products imported into the U.S. infringed on Ford design patents. The parties settled these matters in April 2009 pursuant to a settlement arrangement that expires in March 2015.

U.S. Patent and Trademark Office records indicate that OEMs are seeking and obtaining more design patents than they have in the past. To the extent that the OEMs are successful with intellectual property infringement claims, we could be restricted or prohibited from selling certain aftermarket products which could have an adverse effect on our business. We will likely incur significant expenses investigating and defending intellectual property infringement claims. In addition, aftermarket products certifying organizations may revoke the certification of parts that are the subject of the claims. Lack of certification may negatively impact us because many major insurance companies recommend or require the use of aftermarket products only if they have been certified by an independent certifying organization.

An adverse change in our relationships with our suppliers or auction companies could increase our expenses and hurt our ability to serve our customers.

We are dependent on a relatively small number of suppliers of aftermarket products, most of which are located in Taiwan. Although alternative suppliers exist for substantially all aftermarket products distributed by us, the loss of any one supplier could have a material adverse effect on us until alternative suppliers are located and have commenced providing products. Moreover, our operations are subject to the customary risks of doing business abroad, including, among other things, transportation costs and delays, political instability, currency fluctuations and the imposition of tariffs, import and export controls and other non-tariff barriers (including changes in the allocation of quotas), as well as the uncertainty regarding future relations between China and Taiwan. Because a substantial volume of our sales involves products manufactured from sheet metal, we can be adversely impacted if sheet metal becomes unavailable or is only available at higher prices, which we may not be able to pass on to our customers.

Most of our salvage inventory is obtained from vehicles offered at salvage auctions operated by several companies that own auction facilities in numerous locations across the U.S. We do not typically have contracts with any auction company. According to industry analysts, a small number of companies control a large percentage of the salvage auction market in the U.S. If an auction company prohibited us from participating in its auctions, began competing with us, or significantly raised its fees, our business could be adversely affected through higher costs or the resulting potential inability to service our customers. Moreover, we are facing increased competition in the purchase of salvage vehicles from direct competitors, rebuilders, exporters, and others. This larger number of bidders has caused and may continue to cause our cost of goods sold for wholesale recycled products to increase. Some states regulate bidders to help ensure that salvage vehicles are purchased for legal purposes by qualified buyers. Auction companies have been actively seeking to reduce, circumvent or eliminate these regulations, which would further increase the number of bidders.

We also acquire inventory directly from insurance companies, OEMs, and others. To the extent that these suppliers decide to discontinue these arrangements, our business could be adversely affected through higher costs or the resulting potential inability to service our customers.

If our business relationships with insurance companies end, we may lose important sales opportunities.

Our success depends, in part, on the acceptance and promotion of alternative parts usage by automotive insurance companies. In some places that we operate, alternative parts usage is low, and there can be no assurance that such usage will increase. We also rely on business relationships with several insurance companies. These insurance companies encourage vehicle repair facilities to use products we provide. The business relationships include in some cases participation in aftermarket quality and service assurance programs that may result in a higher usage of our aftermarket products than would be the case without the programs. Our arrangements with these companies may be terminated by them at any time, including in connection with their own business concerns relating to the offering, availability, standards or operations of the aftermarket quality and service assurance programs. We rely on these relationships for sales to some collision repair shops, and a termination of these relationships may result in a loss of sales, which could adversely affect our results of operations.

In an Illinois lawsuit involving State Farm Mutual Automobile Insurance Company ("*Avery v. State Farm*"), a jury decided in October 1999 that State Farm breached certain insurance contracts with its policyholders by using non-OEM replacement products to repair damaged vehicles when use of such products did not restore the vehicle to its "pre-loss condition." The jury found that State Farm misled its customers by not disclosing the use of non-OEM replacement products and the alleged inferiority of those products. The jury assessed damages against State Farm of \$456 million, and the judge assessed an additional \$730 million of disgorgement and punitive damages for violations of the Illinois Consumer Fraud Act. In April 2001, the Illinois Appellate Court upheld the verdict but reduced the damage award by \$130 million because of duplicative damage awards. On August 18, 2005, the Illinois Supreme Court reversed the awards made by the circuit court and found, among other things, that the plaintiffs had failed to establish any breach of contract by State Farm. The U.S. Supreme Court declined to hear an appeal of this case. As a result of this case, some insurance companies reduced or eliminated their use of aftermarket products. Our financial results could be adversely affected if insurance companies modified or terminated the arrangements pursuant to which repair shops buy aftermarket or recycled products from us due to a fear of similar claims.

We may not be able to sell our products due to existing or new laws and regulations prohibiting or restricting the sale of wholesale aftermarket, recycled, refurbished or remanufactured products.

Some jurisdictions have enacted laws prohibiting or severely restricting the sale of certain recycled products that we provide, such as airbags. These and other jurisdictions could enact similar laws or could prohibit or severely restrict the sale of additional recycled products. Restrictions on the products we are able to sell could decrease our revenue and have an adverse effect on our business and operations.

Most states have passed laws that prohibit or limit the use of aftermarket products in collision repair work and/or require enhanced disclosure or vehicle owner consent before using aftermarket products in such repair work. Additional legislation of this kind may be introduced in the future. If additional laws prohibiting or restricting the use of aftermarket products are passed, it could have an adverse impact on our aftermarket products business.

Certain organizations test the quality and safety of vehicle replacement products. If these organizations decide not to test a particular vehicle product or in the event that such organizations decide that a particular vehicle product does not meet applicable quality or safety standards, we may decide to discontinue sales of such product or insurance companies may decide to discontinue authorization of repairs using such product. Such events could adversely affect our business.

We may not be able to successfully acquire new businesses or integrate acquisitions, which could cause our business to suffer.

We may not be able to successfully complete potential strategic acquisitions if we cannot reach agreement on acceptable terms or for other reasons. If we buy a company or a division of a company, we may experience difficulty integrating that company's or division's personnel and operations, which could negatively affect our operating results. In addition:

- the key personnel of the acquired company may decide not to work for us;
- customers of the acquired company may decide not to purchase products from us;
- we may experience business disruptions as a result of information technology systems conversions;
- we may experience additional financial and accounting challenges and complexities in areas such as tax planning, treasury management, and financial reporting;
- we may be held liable for environmental, tax or other risks and liabilities as a result of our acquisitions, some of which we may not have discovered during our due diligence;
- we may intentionally assume the liabilities of the companies we acquire, which could materially and adversely affect our business;
- our existing business may be disrupted or receive insufficient management attention;
- we may not be able to realize the cost savings or other financial benefits we anticipated, either in the amount or in the time frame that we expect; and
- we may incur debt or issue equity securities to pay for any future acquisition, the issuance of which could involve the imposition of restrictive covenants or be dilutive to our existing stockholders.

Our credit agreement places restrictions on our business.

We have a senior secured debt financing facility with a group of lenders. Our total outstanding indebtedness (including bank financing, letters of credit, and notes payable in connection with acquisitions) as of December 31, 2011 was \$991.4 million. The credit agreement contains operating and financial restrictions and requires that we satisfy certain financial and other covenants. The failure to comply with any of these covenants would cause a default under the credit agreement. A default, if not waived, could result in acceleration of our debt, in which case the debt would become immediately due and payable. If this occurs, we may not be able to repay our debt or borrow sufficient funds to refinance it. Even if new financing were available, it may be on terms that are less attractive to us than our existing credit facility or it may be on terms that are not acceptable to us.

Our future capital needs may require that we seek debt financing or additional equity funding that, if not available, could cause our business to suffer.

We may need to raise additional funds in the future to, among other things, refinance existing debt, fund our existing operations, improve or expand our operations, respond to competitive pressures, or make acquisitions. From time to time, we may raise additional funds through public or private financing, strategic alliances, or other arrangements. However, the [recent] turmoil in the credit markets has resulted in tighter credit conditions, which could affect our ability to raise additional funds. If adequate funds are not available on acceptable terms, we may be unable to meet our business or strategic objectives or compete effectively. If we raise additional funds by issuing equity securities, stockholders may experience dilution of their ownership interests, and the newly issued securities may have rights superior to those of the common stock. If we raise additional funds by issuing debt, we may be subject to higher borrowing costs and further limitations on our operations. If we fail to raise capital when needed, our business may be negatively affected.

Our annual and quarterly performance may fluctuate.

Our revenue, cost of goods sold, and operating results have fluctuated on a quarterly and annual basis in the past and can be expected to continue to fluctuate in the future as a result of a number of factors, some of which are beyond our control. Future factors that may affect our operating results include, but are not limited to, those listed in the Special Note on Forward-Looking Statements in this Annual Report on Form 10-K. Accordingly, our results of operations may not be indicative of future performance. These fluctuations in our operating results may cause our results to fall below the expectations of public market analysts and investors, which could cause our stock price or the value of our debt instruments to decline.

Fluctuations in the prices of metals or shipping costs could adversely affect our financial results.

All of our recycling operations generate scrap metal and other metals that we sell. After we dismantle a salvage vehicle for wholesale parts and after vehicles have been used in our self service retail business, the remaining vehicle hulks are sold to scrap processors and other remaining metals are sold to processors and brokers of metals. In addition, we receive "crush only" vehicles from other companies, including OEMs, which we dismantle and which generate scrap metal and other metals. The prices of scrap and other metals have historically fluctuated, sometimes significantly, due to market factors. In addition, buyers may stop purchasing metals entirely due to excess supply. To the extent that the prices of metals decrease materially or buyers stop purchasing metals, our revenue from such sales will suffer and a write-down of our inventory value could be required. The cost of our wholesale recycled and our self service retail inventory purchases may also decrease as a result of falling scrap metal and other metals prices. However, there can be no assurance that our inventory purchasing cost will decrease the same amount or at the same rate as the scrap metal and other metals prices decline, and there may be a delay between the scrap metal and other metals price reductions and any inventory cost reductions. The price of steel is a component of the cost to manufacture products for our aftermarket business. We incur substantial freight costs to import parts from our suppliers, many of whom are located in Asia. If the cost of steel or freight rose we might not be able to pass the cost increases on to our customers.

If we determine that our goodwill has become impaired, we may incur significant charges to our pre-tax income.

Goodwill represents the excess of cost over the fair market value of net assets acquired in business combinations. In the future, goodwill and intangible assets may increase as a result of acquisitions. Goodwill is reviewed at least annually for impairment. Impairment may result from, among other things, deterioration in the performance of acquired businesses, increases in our cost of capital, adverse market conditions, and adverse changes in applicable laws or regulations, including modifications that restrict the activities of the acquired business. As of December 31, 2011, our total goodwill subject to future impairment testing was \$1.5 billion. For further discussion of our annual impairment test, see "Goodwill Impairment" in the Critical Accounting Policies and Estimates section of Item 7 in this Annual Report on Form 10-K.

If the number of vehicles involved in accidents declines, or the number of cars being repaired declines, our business could suffer.

Because our business depends on vehicle accidents for both the demand for repairs using our products and the supply of wholesale recycled products, factors which influence the number and/or severity of accidents, including, but not limited to, the number of vehicles on the road, the number of miles driven, the ages of drivers, the use of cellular telephones and other electronic equipment by drivers, the congestion of traffic, the occurrence and severity of certain weather conditions, the use of alcohol and drugs by drivers, the effectiveness of accident avoidance systems in new vehicles, and the condition of roadways, impact our business. In this regard, a number of states and municipalities have adopted, or are considering adopting, legislation banning the use of handheld cellular telephones while driving, and such restrictions could lead to a decline in accidents. To the extent OEMs develop or are mandated by law to install new accident avoidance systems, the number and severity of accidents

could decrease. Moreover, an increase in fuel prices may cause the number of vehicles on the road to decline and the number of miles driven to decline, as motorists seek alternative transportation options, and this also could lead to a decline in accidents. In addition, the number of new automobiles sold annually in the U.S. has dropped since 2007 compared to the average number of new vehicles sold annually from 1999 through 2006. This could result in a reduction in the number of vehicles on the road and consequently fewer vehicles involved in accidents. In addition, the average age of vehicles has been increasing, and insurance companies may find it uneconomical to repair older vehicles.

Governmental agencies may refuse to grant or renew our operating licenses and permits.

Our operating subsidiaries must obtain licenses and permits from state and local governments to conduct their operations. When we develop or acquire a new facility, we must seek the approval of state and local units of government. Governmental agencies may resist the establishment of a vehicle recycling or refurbishing facility in their communities. There can be no assurance that future approvals or transfers will be granted. In addition, there can be no assurance that we will be able to maintain and renew the licenses and permits our operating subsidiaries currently hold.

If we lose our key management personnel, we may not be able to successfully manage our business or achieve our objectives.

Our future success depends in large part upon the leadership and performance of our executive management team and key employees at the operating level. If we lose the services of one or more of our executive officers or key employees, or if one or more of them decides to join a competitor or otherwise compete directly or indirectly with us, we may not be able to successfully manage our business or achieve our business objectives. If we lose the services of any of our key employees at the operating or regional level, we may not be able to replace them with similarly qualified personnel, which could harm our business.

We rely on information technology and communication systems in critical areas of our operations and a disruption relating to such technology could harm our business.

Some of the information technology systems and communication systems we use for management of our facilities and our financial functions are leased from or operated by other companies, while others are owned by us. In the event that the providers of these systems terminate their relationships with us or if we suffer prolonged outages of these or our own systems for whatever reason, we could suffer disruptions to our operations.

In addition, we continually monitor these systems to find areas for improvement. In the event that we decided to switch providers or to implement our own systems, we may also suffer disruptions to our business. We may be unsuccessful in the development of our own systems, and we may underestimate the costs and expenses of developing and implementing our own systems. Also, our revenue may be hampered during the period of implementing an alternative system, which period could extend longer than we anticipated.

If we experience problems with our fleet of trucks, our business could be harmed.

We use a fleet of trucks to deliver the majority of the products we sell. We are subject to the risks associated with providing trucking services, including inclement weather, disruptions in the transportation infrastructure, governmental regulation, availability and price of fuel, liabilities arising from accidents to the extent we are not covered by insurance, and insurance premium increases. In addition, our failure to deliver products in a timely and accurate manner could harm our reputation and brand, which could have a material adverse effect on our business.

We are subject to environmental regulations and incur costs relating to environmental matters.

We are subject to various federal, state, and local environmental protection and health and safety laws and regulations governing, among other things: the emission and discharge of hazardous materials into the ground,

air, or water; exposure to hazardous materials; and the generation, handling, storage, use, treatment, identification, transportation, and disposal of industrial by-products, waste water, storm water, and mercury and other hazardous materials.

We are also required to obtain environmental permits from governmental authorities for certain of our operations. If we violate or fail to obtain or comply with these laws, regulations, or permits, we could be fined or otherwise sanctioned by regulators. We could also become liable if employees or other parties are improperly exposed to hazardous materials.

Under certain environmental laws, we could be held responsible for all of the costs relating to any contamination at, or migration to or from, our or our predecessors' past or present facilities and at independent waste disposal sites. These laws often impose liability even if the owner or operator did not know of, or was not responsible for, the release of such hazardous substances.

Environmental laws are complex, change frequently, and have tended to become more stringent over time. Our costs of complying with current and future environmental and health and safety laws, and our liabilities arising from past or future releases of, or exposure to, hazardous substances, may adversely affect our business, results of operations, or financial condition.

We could be subject to product liability claims.

If customers of repair shops that purchase our products are injured or suffer property damage, we could be subject to product liability claims by such customers. The successful assertion of this type of claim could have an adverse effect on our business, results of operations or financial condition. In addition, we have agreed to defend and indemnify in certain circumstances insurance companies that could be named as defendants in such lawsuits. The existence of claims for which we must defend and indemnify insurance companies could negatively impact our business, results of operations or financial condition.

Regulations that may be issued under the Anti-Car Theft Act could harm our business.

In 1992, Congress enacted the Anti-Car Theft Act to deter trafficking in stolen vehicles. The purpose of the law is to implement an electronic system to track and monitor vehicle identification numbers and major automotive parts. In January 2009, the U.S. Department of Justice implemented the portion of the system to track and monitor vehicle identification numbers. The portion of the system that would track and monitor major automotive parts would require various entities, including automotive parts recyclers like us, to inspect salvage vehicles for the purpose of collecting the part number for any "covered major part." The Department of Justice has not promulgated rules on this portion of the system, and therefore there has been no progress on the implementation of the system to track and monitor major automotive parts. However, if this system is fully implemented, the requirement to collect the information would place substantial burdens on automotive parts recyclers, including us, that otherwise would not normally exist. It would place similar burdens on repair shops, which may further discourage the use of recycled products by such shops.

Future adjustments to contingent purchase price related to acquisitions could materially affect our results.

From time to time we acquire companies with a component of the purchase consideration being delayed and the payment thereof contingent on certain performance or other factors (the "contingent purchase price"). The accounting principles generally accepted in the United States require that we estimate the amount of the contingent purchase price at the time we complete the acquisition. Each subsequent reporting period (until the contingent purchase price is either paid or no longer potentially payable), we are required to re-evaluate the estimated amount of remaining contingent purchase price that is likely to be paid. If the revised estimate of the future contingent purchase price is higher than the amount accrued, then the difference must be recorded and charged to the income statement in that period. If the revised estimate of the future contingent purchase price is lower than the amount accrued, then the accrual is reduced and the difference is credited to income for the

period. Because some of these payments would not be deductible for tax purposes, it is possible that the expense (or income) would not be tax-effected on our income statements. These adjustments, if required, could be material to our future results of operations.

We operate in foreign jurisdictions, which exposes us to foreign exchange and other risks.

We have operations in the U.K., Canada and Mexico. We are thus subject to foreign exchange exposure to the extent that we purchase inventory in different currencies than we denominate our sales, as well as exposure to foreign tax and other foreign and domestic laws. In addition, Mexico is currently experiencing a heightened level of criminal activity that could affect our ability to maintain our supply of certain aftermarket products.

Risks Relating to Our Common Stock and Financial Structure

Future sales of our common stock may depress our stock price.

We and our stockholders may sell shares of common stock or other equity, debt or instruments which constitute an element of our debt and equity (collectively, "securities") in the future. We may also issue shares of common stock under our equity incentive plan or in connection with future acquisitions. We cannot predict the size of future issuances of securities or the effect, if any, that future issuances and sales of shares of our common stock or other securities will have on the price of our common stock. Sales of substantial amounts of common stock (including shares issued in connection with an acquisition), or the perception that such sales could occur, may cause the price of our common stock to fall.

Delaware law, our charter documents and our loan documents may impede or discourage a takeover, which could affect the price of our stock.

The anti-takeover provisions of our certificate of incorporation and bylaws, our loan documents and Delaware law could, together or separately, impose various impediments to the ability of a third party to acquire control of us, even if a change in control would be beneficial to our existing stockholders. Our certificate of incorporation and bylaws have provisions that could discourage potential takeover attempts and make attempts by stockholders to change management more difficult. Our credit agreement provides that a change of control is an event of default. Our incorporation under Delaware law and these provisions could also impede an acquisition, takeover, or other business combination involving us or discourage a potential acquirer from making a tender offer for our common stock, which, under certain circumstances, could reduce the price of our common stock.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Our properties are described in "Item 1—Business" above, and such description is incorporated by reference into this Item 2. Our properties are sufficient to meet our present needs, and we do not anticipate any difficulty in securing additional space to conduct operations or additional office space, as needed, on terms acceptable to us.

ITEM 3. LEGAL PROCEEDINGS

We are from time to time subject to various claims and lawsuits incidental to our business. In the opinion of management, currently outstanding claims and suits will not, individually or in the aggregate, have a material adverse effect on our consolidated financial statements.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

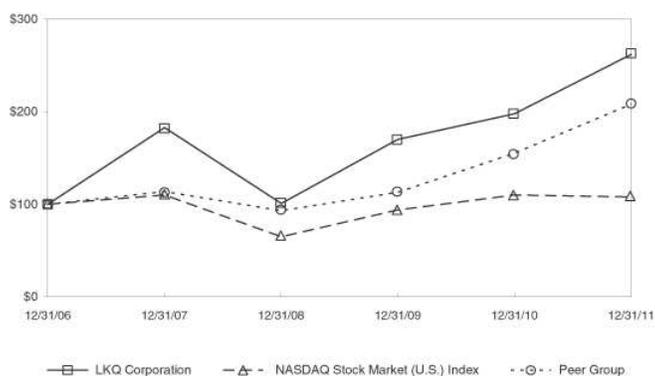
Our common stock is traded on the NASDAQ Global Select Market under the symbol "LKQX." At December 31, 2011 there were 33 record holders of our common stock. The following table sets forth, for the periods indicated, the range of the high and low sales prices of shares of our common stock on NASDAQ.

	High	Low
2010		
First Quarter	\$ 20.90	\$ 18.02
Second Quarter	22.00	17.29
Third Quarter	21.09	17.81
Fourth Quarter	23.26	20.31
2011		
First Quarter	26.30	22.00
Second Quarter	27.27	22.73
Third Quarter	27.75	20.38
Fourth Quarter	31.25	22.25

We have not paid any cash dividends on our common stock. We intend to continue to retain our earnings to finance our growth and for general corporate purposes. We do not anticipate paying any cash dividends on our common stock in the foreseeable future. In addition, our credit facility contains, and future financing agreements may contain, financial covenants and limitations on payment of cash dividends or other distributions of assets.

The following graph compares the percentage change in the cumulative total returns on our common stock, the NASDAQ Stock Market (U.S.) Index and the following group of peer companies (the "Peer Group"): Copart, Inc.; O'Reilly Automotive, Inc.; Genuine Parts Company; and Fastenal Co., for the period beginning on December 31, 2006 and ending on December 31, 2011 (which was the last day of our 2011 fiscal year). The stock price performance in the following graph is not necessarily indicative of future stock price performance. The graph assumes that the value of an investment in each of the Company's common stock, the NASDAQ Stock Market (U.S.) Index and the Peer Group was \$100 on December 31, 2006 and that all dividends, where applicable, were reinvested.

**Comparison of Cumulative Return
Among LKQ Corporation, the NASDAQ Stock Market (U.S.) Index and the Peer Group**



	12/31/2006	12/31/2007	12/31/2008	12/31/2009	12/31/2010	12/31/2011
LKQ Corporation	\$ 100	\$ 183	\$ 101	\$ 170	\$ 198	\$ 262
NASDAQ Stock Market (U.S.) Index	\$ 100	\$ 110	\$ 65	\$ 94	\$ 110	\$ 108
Peer Group	\$ 100	\$ 114	\$ 93	\$ 113	\$ 155	\$ 208

The following table provides information about our common stock that may be issued under all of our equity compensation plans as of December 31, 2011.

Equity Compensation Plan Information

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants, and rights (a)	Weighted-average exercise price of outstanding options, warrants, and rights (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by stockholders			
Stock options	6,539,046	\$ 12.93	
Restricted stock units	716,791	\$ —	
Total equity compensation plans approved by stockholders	7,255,837		7,876,185
Equity compensation plans not approved by stockholders		\$ —	
Total	7,255,837		7,876,185

The number of securities to be issued upon exercise of outstanding options, warrants, and rights includes outstanding stock options and outstanding restricted stock units but excludes restricted stock.

The number of securities remaining for future issuance under equity compensation plans includes 7,331,768 shares under the LKQ Corporation 1998 Equity Incentive Plan and 544,417 shares under the LKQ Corporation Stock Option and Compensation Plan for Non-Employee Directors.

See Note 4, "Equity Incentive Plans," to the consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K for further information related to the equity incentive plans listed above.

ITEM 6. SELECTED FINANCIAL DATA

The following selected consolidated financial data should be read together with "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Item 7 of this Annual Report on Form 10-K and our consolidated financial statements and related notes included in Item 8 of this Annual Report on Form 10-K. In 2009, we reclassified into discontinued operations the results of certain self service retail facilities that we sold, agreed to sell or closed. Statements of Income data for prior periods have been updated to reflect only the continuing operations.

(in thousands, except per share data)

	Year Ended December 31,				
	2007 (a)	2008 (b)	2009 (c)	2010 (d)	2011 (e)
Statements of Income Data:					
Revenue	\$ 1,112,351	\$ 1,908,532	\$ 2,047,942	\$ 2,469,881	\$ 3,269,862
Cost of goods sold	614,034	1,064,706	1,120,129	1,376,401	1,877,869
Gross margin	498,317	843,826	927,813	1,093,480	1,391,993
Operating income	119,051	193,280	231,448	297,877	361,483
Other (income) expense					
Interest, net	16,009	35,522	30,899	28,316	22,447
Other (income) expense, net	(1,612)	(1,375)	(4,768)	(564)	3,265
Income from continuing operations before provision for income taxes	104,654	159,133	205,317	270,125	335,771
Provision for income taxes	41,032	62,041	78,180	103,007	125,507
Income from continuing operations	\$ 63,622	\$ 97,092	\$ 127,137	\$ 167,118	\$ 210,264
Basic earnings per share from continuing operations	\$ 0.56	\$ 0.71	\$ 0.90	\$ 1.17	\$ 1.44
Diluted earnings per share from continuing operations	\$ 0.53	\$ 0.69	\$ 0.88	\$ 1.15	\$ 1.42
Weighted average shares outstanding-basic(f)	114,161	136,488	140,541	143,271	146,126
Weighted average shares outstanding-diluted(f)	119,937	141,023	143,990	145,857	148,375
Other Financial Data:					
Net cash provided by operating activities	\$ 54,369	\$ 132,961	\$ 164,002	\$ 159,183	\$ 211,772
Net cash used in investing activities	(905,821)	(138,910)	(102,494)	(191,583)	(571,607)
Net cash provided by (used in) financing activities	921,629	11,793	(33,165)	18,962	311,411
Capital expenditures(g)	908,122	143,435	125,624	218,243	700,010
Depreciation and amortization	18,018	33,421	38,062	41,428	54,505
Balance Sheet Data:					
Total assets	\$ 1,692,655	\$ 1,881,804	\$ 2,020,121	\$ 2,299,509	\$ 3,199,704
Working capital	389,469	441,705	526,125	611,555	752,042
Long-term obligations, including current portion	658,462	642,874	603,045	600,954	956,076
Stockholders' equity	849,777	1,020,506	1,179,434	1,414,161	1,644,085

(a) Includes the results of operations of Keystone Automotive Industries, Inc. from its acquisition on October 12, 2007 and 11 other businesses from their respective acquisition dates in 2007.

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- (b) Includes the results of operations of Pick-Your-Part Auto Wrecking from its acquisition on August 25, 2008 and seven other businesses from their respective acquisition dates in 2008.
 - (c) Includes the results of operations of Greenleaf Auto Recyclers, LLC ("Greenleaf") from its acquisition on October 1, 2009 and seven other businesses from their respective acquisition dates in 2009. We recorded a gain on bargain purchase for the Greenleaf acquisition totaling \$4.3 million, which is included in Other income, net.
 - (d) Includes the results of operations of 20 businesses from their respective acquisition dates in 2010.
 - (e) Includes the results of operations of Euro Car Parts Holdings Limited from its acquisition effective October 1, 2011 and 20 other businesses from their respective acquisition dates in 2011. Our 2011 results include a loss on debt extinguishment of \$5.3 million related to our execution of a new senior secured credit facility on March 25, 2011. Also in 2011, we recorded a net \$1.4 million gain on adjustments to contingent consideration liabilities. The loss on debt extinguishment and adjustment to contingent consideration liabilities are included in Other expense, net.
 - (f) We sold 23,600,000 shares of our common stock on September 19, 2007 in connection with a follow-on public offering. Accordingly, the shares used in the per share calculations for basic and diluted earnings per share in 2007 do not fully reflect the impact of the transactions that occurred during that year.
 - (g) Includes consideration paid and payable for acquisitions and amounts paid and payable for property additions.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**Overview**

We provide replacement parts, components and systems needed to repair vehicles (cars and trucks). Buyers of vehicle replacement products have the option to purchase from primarily five sources: new products produced by original equipment manufacturers ("OEMs"), which are commonly known as OEM products; new products produced by companies other than the OEMs, which are sometimes referred to as "aftermarket" products; recycled products originally produced by OEMs, which we refer to as recycled products; used products that have been refurbished; and used products that have been remanufactured.

We distribute a variety of products to collision and mechanical repair shops, including aftermarket collision and mechanical products, recycled collision and mechanical products, refurbished collision replacement products such as wheels, bumper covers and lights, and remanufactured engines. Collectively, we refer to our products as alternative parts. We are the nation's largest provider of alternative vehicle collision replacement products, and a leading provider of alternative vehicle mechanical replacement products. Our sales, processing, and distribution facilities reach most major markets in the U.S. and Canada. We expanded our wholesale operations effective October 1, 2011 with our acquisition of Euro Car Parts Holdings Limited ("ECP"), the largest distributor of automotive aftermarket products in the United Kingdom. In addition to our wholesale operations, we operate self service retail facilities that sell recycled automotive products. We also sell recycled heavy-duty truck products and used heavy-duty trucks. We have organized our businesses into four operating segments: Wholesale—North America; Wholesale—Europe; Self Service; and Heavy-Duty Truck. We aggregate our North American operating segments (Wholesale—North America, Self Service and Heavy-Duty Truck) into one reportable segment, resulting in two reportable segments: North America and Europe.

Our revenue, cost of goods sold, and operating results have fluctuated on a quarterly and annual basis in the past and can be expected to continue to fluctuate in the future as a result of a number of factors, some of which are beyond our control. Factors that may affect our operating results include, but are not limited to, those listed in the Special Note on Forward-Looking Statements in Item 1 of this Annual Report on Form 10-K. Due to these factors, our operating results in future periods can be expected to fluctuate. Accordingly, our historical results of operations may not be indicative of future performance.

Acquisitions

Since our inception in 1998 we have pursued a growth strategy of both organic growth and acquisitions. We have pursued acquisitions that we believe will help drive profitability, cash flow and stockholder value. Our principal focus for acquisitions is companies that will expand our geographic presence and our ability to provide a wider choice of alternative vehicle replacement products to our customers.

Effective October 1, 2011, we acquired ECP, which marks our entry into the European automotive aftermarket business. ECP operates out of 90 branches, supported by eight regional hubs and a national distribution center from which multiple deliveries are made each day. ECP's product offerings are primarily focused on automotive aftermarket mechanical products, many of which are sourced from the same suppliers that provide products to the OEMs. The expansion of our geographic presence beyond North America into the European market offers an opportunity to us as that market has historically had a low penetration of alternative collision parts.

In addition to our acquisition of ECP, we made 20 acquisitions in North America in 2011 (12 wholesale businesses, five recycled heavy-duty truck products businesses and three self service retail operations). Our acquisitions included the purchase of two engine remanufacturers, which expanded our presence in the remanufacturing industry that we entered in 2010. Additionally, our acquisition of an automotive heating and cooling component distributor supplements our expansion into the automotive heating and cooling aftermarket.

products market. Our North American wholesale business acquisitions also included the purchase of the U.S. vehicle refinish paint distribution business of Akzo Nobel Automotive and Aerospace Coatings (the "Akzo Nobel paint business"), which allowed us to increase our paint and related product offerings and expand our geographic presence in the automotive paint market. Our other 2011 acquisitions enabled us to expand our geographic presence and enter new markets.

In 2010, we made 20 acquisitions in North America (16 wholesale businesses, one recycled heavy-duty truck products business, two self service retail operations and one tire recycling business). Our acquisitions included the purchase of an engine remanufacturer, which allowed us to further vertically integrate our supply chain. We expanded our product offerings through the acquisition of an automotive heating and cooling component business, as well as a tire recycling business. Our 2010 acquisitions have also enabled us to expand our geographic presence, most notably in Canada through our purchase of Cross Canada, an aftermarket product supplier.

In 2009, we acquired eight businesses in North America (five wholesale businesses and three recycled heavy-duty truck products businesses). The acquisitions enabled us to increase our geographic presence in the wholesale products business and expand our network of recycled heavy-duty truck products facilities. Our 2009 acquisitions included Greenleaf Auto Recyclers, LLC ("Greenleaf"), which we purchased from Schnitzer Steel Industries, Inc. ("SSI") in October. This acquisition enabled us to increase our geographic presence and increase our capacity in numerous markets.

Divestitures

In October 2009, we sold to SSI four retail oriented self service facilities in Oregon and Washington. We also sold certain business assets to SSI related to two self service retail facilities in Northern California and a self service retail facility in Portland, Oregon. We have closed the two self service retail facilities in Northern California and converted the self service operation in Portland to a wholesale recycling business. We also agreed to sell to SSI two self service retail facilities in Dallas, Texas and closed this portion of the transaction on January 15, 2010. Certain of these facilities qualified for treatment as discontinued operations. The financial results and assets and liabilities of these facilities are segregated from our continuing operations and presented as discontinued operations in the Consolidated Balance Sheets and Consolidated Statements of Income for all periods presented. Unless otherwise noted, this Management's Discussion and Analysis of Financial Condition and Results of Operations relates only to financial results from continuing operations.

Sources of Revenue

We report our revenue in three categories: (i) aftermarket, other new and refurbished products; (ii) recycled, remanufactured and related products and services; and (iii) other.

Our revenue from the sale of vehicle replacement products and related services includes sales of (i) aftermarket, other new and refurbished products and (ii) recycled, remanufactured and related products and services. During 2011, sales of vehicle replacement products and services represented approximately 84% of our consolidated sales. Of these sales, approximately 59% were derived from the sales of aftermarket, other new and refurbished products, while 41% were composed of recycled and remanufactured products and services sales. Our aftermarket, other new and refurbished products revenue includes revenue generated by ECP, an automotive aftermarket products distributor, between the acquisition date and year-end. With our acquisitions of engine remanufacturers in 2010 and 2011, we have begun to vertically integrate our recycled and remanufactured products supply chain by bringing the engine remanufacturing process in house.

We sell the majority of our vehicle replacement products to collision and mechanical repair shops. Our vehicle replacement products include engines, transmissions, front-ends, doors, trunk lids, bumper covers, hoods, fenders, grilles, valances, wheels, head lamps and tail lamps. For an additional fee, we sell extended warranty contracts for certain mechanical products. These contracts cover the cost of parts and labor and are sold for

periods of six months, one year, two years or a non-transferable lifetime warranty. We defer the revenue from such contracts and recognize it ratably over the term of the contracts or three years in the case of lifetime warranties. The demand for our products and services is influenced by several factors, including the number of vehicles in operation, the number of miles being driven, the frequency and severity of vehicle accidents, availability and pricing of new parts, seasonal weather patterns and local weather conditions. Additionally, automobile insurers exert significant influence over collision repair shops as to how an insured vehicle is repaired and the cost level of the products used in the repair process. Accordingly, we consider automobile insurers to be key demand drivers of our products. While they are not our direct customers, we do provide insurance carriers services in an effort to promote the increased usage of alternative replacement products in the repair process. Such services include the review of vehicle repair order estimates, direct quotation services to insurance company adjusters and an aftermarket parts quality and service assurance program. We neither charge a fee to the insurance carriers for these services nor adjust our pricing of products for our customers when we perform these services for insurance carriers.

There is no standard price for many of our products, but rather a pricing structure that varies from day to day based upon such factors as product availability, quality, demand, new OEM replacement product prices, the age of the vehicle from which the part was obtained and competitor pricing.

In 2011, revenue from other sources represented approximately 16% of our consolidated sales. These other sources include scrap sales and sales of aluminum ingots and sows. We derive scrap metal from several sources, including vehicles that have been used in both our wholesale and self service recycling operations and from OEMs and other entities that contract with us to dismantle and scrap certain vehicles (which we refer to as "crush only" vehicles). Revenue from scrap sales will vary from period to period based on fluctuations in commodity prices, the speed with which they fluctuate and the volume of vehicles we sell for scrap.

Cost of Goods Sold

Our cost of goods sold for aftermarket products includes the price we pay for the parts, freight, and overhead costs including labor, fuel expense, and facility and machinery costs related to the purchasing, warehousing and distribution of our inventory. Our aftermarket products are acquired from a number of vendors. Our cost of goods sold for refurbished products includes the price we pay for inventory, freight, and costs to refurbish the parts, including direct and indirect labor, facility costs including rent and utilities, machinery and equipment costs including equipment rental, repairs and maintenance, depreciation and other overhead related to refurbishing operations.

Our cost of goods sold for recycled products includes the price we pay for the salvage vehicle and, where applicable, auction, storage, and towing fees. Our cost of goods sold also includes labor and other costs we incur to acquire and dismantle such vehicles. Since 2009, our labor and labor-related costs related to acquisition and dismantling have accounted for approximately 8% of our cost of goods sold for vehicles we dismantle. We are facing increasing competition in the purchase of salvage vehicles from shredders and scrap recyclers, internet-based buyers, and others. Combined with overall higher demand for used vehicles resulting from the economic decline beginning in late 2008, we have been paying and may continue to pay higher prices for salvage vehicles. The acquisition and dismantling of salvage vehicles is a manual process and, as a result, energy costs are not material. Our cost of goods sold for remanufactured products includes the price we pay for cores, freight, costs to remanufacture the products, including direct and indirect labor, rent, depreciation and other overhead related to remanufacturing operations.

Some of our salvage mechanical products are sold with a standard six-month warranty against defects. Additionally, some of our remanufactured engines are sold with a standard three-year warranty against defects. We record the estimated warranty costs at the time of sale using historical warranty claims information to project future warranty claims activity and related expenses. We also sell separately priced extended warranty contracts for certain mechanical products. The expense related to extended warranty claims is recognized when the claim is made.

Expenses

Our facility and warehouse expenses primarily include our costs to operate our aftermarket warehouses, wholesale and heavy-duty truck salvage yards and self service retail facilities. These costs include labor for plant management and facility and warehouse personnel and related incentive compensation and employee benefits, rent, other facility expenses such as utilities, property insurance, and taxes, and repairs and maintenance costs related to our facilities and equipment. The costs included in facility and warehouse expenses do not relate to inventory processing or conversion activities and, as such, are classified below the gross margin line on our Consolidated Statements of Income.

Our distribution expenses primarily include our costs to prepare and deliver our products to our customers. Included in our distribution expense category are labor costs for drivers, fuel, third party freight costs, local delivery and transfer truck leases or rentals, vehicle repairs and maintenance, supplies and insurance.

Our selling and marketing expenses primarily include salary, commission and other incentive compensation expenses for sales personnel, advertising, promotion and marketing costs, telephone and other communication expenses, credit card fees and bad debt expense. Since 2009, personnel costs have accounted for approximately 80% of our selling and marketing expenses. Most of our product sales personnel are paid on a commission basis. The number and quality of our sales force is critical to our ability to respond to our customers' needs and increase our sales volume. Our objective is to continually evaluate our sales force, develop and implement training programs, and utilize appropriate measurements to assess our selling effectiveness.

Our general and administrative expenses primarily include the costs of our corporate offices and financial services center that provide corporate and field management, treasury, accounting, legal, payroll, business development, human resources and information systems functions. These costs include wages and benefits for corporate, regional and administrative personnel, stock-based compensation and other incentive compensation, accounting, legal and other professional fees, IT system support and maintenance expenses, and telephone and other communication costs.

Seasonality

Our operating results are subject to quarterly variations based on a variety of factors, influenced primarily by seasonal changes in weather patterns. During the winter months we tend to have higher demand for our products because there are more weather related accidents. In addition, the cost of salvage vehicles tends to be lower as more weather related accidents occur, generating a larger supply of total loss vehicles.

Critical Accounting Policies and Estimates

The discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates, assumptions, and judgments that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosure of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates, assumptions, and judgments, including those related to revenue recognition, inventory valuation, business combinations, goodwill impairment, self-insurance programs, contingencies, accounting for income taxes, and stock-based compensation. We base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances. The results of these estimates form the basis for our judgments about the carrying values of assets and liabilities and our recognition of revenue. Actual results may differ from these estimates.

Revenue Recognition

We recognize and report revenue from the sale of vehicle replacement products when they are shipped or picked up and title has transferred, subject to a reserve for returns, discounts and allowances that management estimates based upon historical information. A product would ordinarily be returned within a few days of shipment. Our customers may earn discounts based upon sales volumes or sales volumes coupled with prompt payment. Allowances are normally given within a few days following product shipment. We analyze historical returns and allowances activity by comparing the items to the original invoice amounts and dates. We use this information to project future returns and allowances on products sold. If actual returns and allowances are higher than our historical experience, there would be an adverse impact on our operating results in the period of occurrence.

For an additional fee, we also sell extended warranty contracts for certain mechanical products. Revenue from these contracts is deferred and recognized ratably over the term of the contracts, or three years in the case of lifetime warranties.

Inventory Accounting

Aftermarket and Refurbished Product Inventory. Aftermarket and refurbished product inventory is recorded at the lower of cost or market. Our aftermarket inventory cost is based on the average price we pay for parts, and includes expenses incurred for freight and overhead costs. For items purchased from foreign sources, import fees and duties and transportation insurance are also included. Our refurbished product inventory cost is based on the average price we pay for cores, and includes expenses incurred for freight, refurbishing costs and overhead.

Salvage and Remanufactured Inventory. Salvage inventory is recorded at the lower of cost or market. Our salvage inventory cost is established based upon the price we pay for a vehicle, including auction, storage and towing fees, as well as expenditures for buying and dismantling. Inventory carrying value is determined using the average cost to sales percentage at each of our facilities and applying that percentage to the facility's inventory at expected selling prices. The average cost to sales percentage is derived from each facility's historical vehicle profitability for salvage vehicles purchased at auction or from contracted rates for salvage vehicles acquired under direct procurement arrangements. Remanufactured inventory cost is based upon the price paid for cores, and also includes expenses incurred for freight, direct manufacturing costs and overhead.

For all inventory, our carrying value is reduced regularly to reflect the age and current anticipated demand for our products. If actual demand differs from our estimates, additional reductions to our inventory carrying value would be necessary in the period such determination is made.

Business Combinations

We record our acquisitions under the purchase method of accounting, under which the acquisition purchase price is allocated to the assets acquired and liabilities assumed based upon their respective fair values. We utilize management estimates and, in some instances, independent third-party valuation firms to assist in determining the fair values of assets acquired, liabilities assumed and contingent consideration granted. Such estimates and valuations require us to make significant assumptions, including projections of future events and operating performance. The purchase price allocation is subject to change during the measurement period, which is limited to one year subsequent to the acquisition date.

For certain acquisitions, we may issue contingent consideration under which additional payments will be made to the former owners if specified future events occur or conditions are met, such as meeting profitability or earnings targets. Each contingent consideration obligation is measured at the acquisition date fair value of the consideration, which is determined using the discounted probability-weighted expected cash flows. At each subsequent reporting period, we remeasure the liability at fair value and record any changes to the fair value

through Change in Fair Value of Contingent Consideration Liabilities within Other Expense (Income) on our Consolidated Statements of Income. Increases or decreases in the fair value of the contingent consideration liability can result from changes in discount periods and rates, variances between actual results achieved and projected results, changes in the projected results of the acquired business, or changes in our assessment of the probabilities surrounding the achievement of targets detailed in the respective agreements. As of December 31, 2011, we recorded \$82.4 million of contingent consideration liabilities. Actual payouts under these contingent consideration arrangements will be determined at the end of the performance periods, and if the maximum payments were earned, the total payout would be approximately \$110 million.

Goodwill Impairment

We are required to test our goodwill for impairment at least annually. In September 2011, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2011-08, "Testing Goodwill for Impairment," which grants entities the option to first perform a qualitative assessment of whether it is more likely than not that a reporting unit's fair value is less than its carrying value. Under this ASU, if an entity concludes that it is more likely than not that the fair value of a reporting unit is less than its carrying value, the entity is required to perform the two-step impairment test for the reporting unit. The revised guidance also allows an entity to bypass the qualitative assessment and proceed directly to step one of the two-step impairment analysis where a fair value calculation is performed. This guidance is effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. Early adoption is also permitted, and we elected to adopt this guidance for our goodwill impairment tests in the fourth quarter of 2011.

Under both the qualitative assessment and the two-step quantitative impairment test, we are required to evaluate events and circumstances that may affect the performance of the reporting unit and the extent to which the events and circumstances may impact the future cash flows of the reporting unit to determine whether the fair value of the assets exceed the carrying value. If these assumptions or estimates change in the future, we may be required to record impairment charges for these assets. In response to changes in industry and market conditions, we may be required to strategically realign our resources and consider restructuring, disposing of, or otherwise exiting businesses, which could result in an impairment of goodwill.

We are organized into four operating segments: Wholesale—North America; Wholesale—Europe; Self Service; and Heavy-Duty Truck. We have also concluded that these four operating segments are reporting units for purposes of goodwill impairment testing in 2011. We perform goodwill impairment tests annually in the fourth quarter and between annual tests whenever events indicate that an impairment may exist. During 2011, we did not identify any events or changes in circumstances that would more likely than not reduce the fair value of our reporting units below their carrying amounts. Therefore, we did not perform any impairment tests other than our annual test in the fourth quarter of 2011.

In 2011, we performed a qualitative assessment under the guidance of ASU 2011-08 for our Wholesale—North America and Self Service reporting units. Based on our analyses, we determined it was more likely than not that the fair value of each of these reporting units exceeded the respective carrying value, and no adjustments to goodwill were required. After considering the results of the Heavy-Duty Truck 2010 impairment test and the growth in the reporting unit in 2011, we elected to bypass the qualitative assessment and proceed directly to the quantitative two-step goodwill impairment test for this reporting unit. In our step one calculation, we established the fair value of the reporting unit using weightings of the results of a discounted cash flow methodology and a comparative market multiples approach. We believe that using two methods to determine fair value limits the chances of an unrepresentative valuation. The results of this test indicated that the goodwill was not impaired. A 10% decrease in the fair value estimate of the Heavy-Duty Truck reporting unit would not have changed this determination. Given the limited period of time between the acquisition date of ECP and the date of our impairment test, we updated our quantitative assessment of the reporting unit's fair value from the acquisition date to the date of our annual goodwill impairment test. Based on the results of this analysis, we concluded that the fair value of the Wholesale—Europe exceeded the carrying value, and no adjustments to goodwill were required.

As of December 31, 2011, we had a total of \$1.5 billion in goodwill subject to future impairment tests. If we were required to recognize goodwill impairments, we would report those impairment losses as part of our operating results.

Self-Insurance Programs

We self-insure a portion of employee medical benefits under the terms of our employee health insurance program. We also self-insure a portion of our property and casualty risk, which includes automobile liability, general liability, directors and officers liability, workers' compensation and property, under deductible insurance programs. We purchase certain stop-loss insurance to limit our liability exposure. The insurance premium costs are expensed over the contract periods.

We record an accrual for the claims expense related to our employee medical benefits, automobile liability, general liability, directors and officers liability, workers' compensation and property claims based upon the expected amount of all such claims. If actual claims are higher than what we anticipated, our accrual might be insufficient to cover our claims costs, and we would increase our claims expense in that period to cover the shortfall.

Contingencies

We are subject to the possibility of various loss contingencies arising in the ordinary course of business resulting from litigation, claims and other commitments, and from a variety of environmental and pollution control laws and regulations. We consider the likelihood of loss or the incurrence of a liability, as well as our ability to reasonably estimate the amount of loss, in determining loss contingencies. We accrue an estimated loss contingency when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. We determine the amount of reserves, if any, with the assistance of outside legal counsel. We regularly evaluate current information available to us to determine whether the accruals should be adjusted. If the amount of an actual loss were greater than the amount we have accrued, the excess loss would have an adverse impact on our operating results in the period that the loss occurred. If the loss contingency is subsequently determined to no longer be probable, the amount of loss contingency previously accrued would be included in our operating results in the period such determination was made. We do not expect the resolution of loss contingencies to have a material effect on our financial statements.

Accounting for Income Taxes

All income tax amounts reflect the use of the liability method. Under this method, deferred tax assets and liabilities are determined based upon the expected future tax consequences of temporary differences between the carrying amounts of assets and liabilities for financial and income tax reporting purposes. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. We operate in multiple tax jurisdictions with different tax rates, and we determine the allocation of income to each of these jurisdictions based upon various estimates and assumptions.

We record a provision for taxes based upon our effective income tax rate. We record a valuation allowance to reduce our deferred tax assets to the amount that we expect is more likely than not to be realized. We consider historical taxable income, expectations and risks associated with our estimates of future taxable income and ongoing tax planning strategies in assessing the need for a valuation allowance. We had a valuation allowance of \$1.9 million and \$2.6 million at December 31, 2011 and 2010, respectively, against our deferred tax assets. Should we determine that it is more likely than not that we would be able to realize all of our deferred tax assets in the future, an adjustment of \$1.9 million to the net deferred tax asset would increase income in the period such determination was made. Conversely, should we determine that it is more likely than not that we would not be able to realize all of our deferred tax assets in the future, an adjustment to the net deferred tax assets would decrease income in the period such determination was made.

We recognize the benefits of uncertain tax positions taken or expected to be taken in tax returns in the provision for income taxes only for those positions that are more likely than not to be realized. We recognize interest and penalties accrued relating to unrecognized tax benefits in our income tax expense. In the normal course of business we will undergo tax audits by various tax jurisdictions. Such audits often require an extended period of time to complete and may result in income tax adjustments if changes to the allocation are required between jurisdictions with different tax rates. Our operations involve dealing with uncertainties and judgments in the application of complex tax regulations in multiple jurisdictions. The final taxes paid are dependent upon many factors, including negotiations with taxing authorities in various jurisdictions and resolution of disputes arising from federal, state and international tax audits. Changes in accruals for uncertainties arising from the resolution of pre-acquisition contingencies and deferred income tax asset valuation allowances of acquired businesses after the measurement period will be recorded in earnings in the period the changes are determined. Adjustments to other tax accruals are generally recognized in the period they are determined.

Stock-Based Compensation

We measure compensation cost for all stock-based payments (including employee stock options) at fair value and recognize compensation expense for all awards on a straight-line basis over the requisite service period of the award.

Our last option grant was in 2010. For valuing our option grants, we utilized several key factors and assumptions within our valuation model. We have been in existence since February 1998 and have been a public company since October 2003. We elected to use the Black-Scholes valuation model. At the last grant date, we used the simplified method in developing an estimate of expected life of stock options because we lacked sufficient data to calculate an expected life based on historical experience. Our first annual option grant with a full five year vesting period since we became a public company was on January 13, 2006, and these awards became fully vested in January 2011. Additionally, our options have a ten year life while our existence as a public company had been just over six years when the 2010 grant was made. In the event that we issue more options in the future, we will reassess the use of the simplified method based on the additional historical information available. We estimated volatility, which is a measure of the amount by which our stock price is expected to fluctuate during the expected term of the option, based on the historical volatility of our stock. Our forfeiture assumptions were based on voluntary and involuntary termination behavior as well as historical forfeiture rates. We estimated forfeitures at the time of grant and revise our estimates, if necessary, in subsequent periods if actual forfeitures differ from those estimates. The dividend yield represents the dividend rate expected to be paid over the option's expected term, and we currently have no plans to pay dividends. The risk-free interest rate was based on U.S. Treasury zero-coupon issues available at the time each option is granted that have a remaining life approximately equal to the option's expected life.

Recently Issued Accounting Pronouncements

See "Recent Accounting Pronouncements" in Note 2 "Summary of Significant Accounting Policies" to the consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K for information related to new accounting standards.

Financial Information by Geographic Area

See Note 16, "Segment and Geographic Information" to the consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K for information related to our revenue and long-lived assets by geographic region.

Results of Operations—Consolidated

The following table sets forth statements of income data as a percentage of total revenue for the periods indicated:

	Year Ended December 31,		
	2011	2010	2009
Statements of Income Data:			
Revenue	100.0%	100.0%	100.0%
Cost of goods sold	57.4%	55.7%	54.7%
Gross margin	42.6%	44.3%	45.3%
Facility and warehouse expenses	9.0%	9.5%	9.8%
Distribution expenses	8.8%	8.6%	8.9%
Selling, general and administrative expenses	12.0%	12.6%	13.5%
Restructuring and acquisition related expenses	0.2%	0.0%	0.1%
Depreciation and amortization	1.5%	1.5%	1.7%
Operating income	11.1%	12.1%	11.3%
Other expense, net	0.8%	1.1%	1.3%
Income from continuing operations before provision for income taxes	10.3%	10.9%	10.0%
Provision for income taxes	3.8%	4.2%	3.8%
Income from continuing operations	6.4%	6.8%	6.2%
Income from discontinued operations	0.0%	0.1%	0.0%
Net income	6.4%	6.8%	6.2%

Year Ended December 31, 2011 Compared to Year Ended December 31, 2010

Revenue. Our revenue increased 32.4% to \$3.3 billion in 2011 compared to \$2.5 billion in 2010. The increase in revenue was primarily due to business acquisitions, the higher volume of products we sold and higher revenue from scrap metal and other metals sales. Our acquisition related revenue growth of 21.5% includes \$138 million of incremental revenue generated by ECP since its acquisition effective October 1, 2011. Our total organic revenue growth rate was 10.7%, composed of 7.9% and 28.0% organic growth in parts and services revenue and other revenue, respectively. Organic growth in parts and services revenue reflects the increase in salvage revenue over relatively lower levels during the prior year due primarily to volume increases. The prior year period was impacted by the cash for clunkers program, under which we purchased lower cost, older vehicles that did not have the same parts revenue potential as our more recent inventory purchases. Additionally, during the first quarter of 2010, we reduced purchases of salvage vehicles due to higher acquisition prices at the salvage auctions, resulting in lower volume of salvage parts available for sale during the first two quarters of 2010. During the second half of 2011, our organic revenue growth rate in parts and services revenue of 6.5% reflected the lessening impact of the cash for clunkers program and lower buying levels on the prior year results. Our aftermarket revenue increased primarily due to growth in sales volumes, which resulted from higher inventory purchases that contributed to a greater volume of parts available for sale. The growth in other revenue, which includes sales of scrap metal and other metals, was primarily due to higher metals prices combined with higher volume of scrap sold. We also had a 0.1% favorable impact on revenue derived from foreign exchange on our Canadian operations.

Cost of Goods Sold. Our cost of goods sold increased to 57.4% of revenue in 2011 from 55.7% of revenue in 2010. Of the increase in cost of goods sold as a percentage of revenue, 0.8% was due to higher input costs combined with competitive sales pricing pressure in our aftermarket products. Cost of goods sold in 2011 was also impacted by a shift in product mix, which increased cost of goods sold as a percentage of revenue by 0.6%. Certain of our acquisitions toward the end of 2010 and during 2011 increased our revenue in product lines that are complementary to our existing vehicle replacement parts offerings but have lower gross margins, such as remanufactured engines. The product mix effect was also partially generated by sales of scrap aluminum as we

expanded our furnace capacity through an acquisition in August 2010. Our sales of scrap aluminum, which is a by-product of our wheel refinishing operations, generate lower margins than our sales of vehicle products. Our acquisition of ECP, which generates lower gross margins than our North American business because of a greater weighting on lower margin mechanical products, increased our cost of goods sold as a percentage of revenue by 0.2%. Vehicle acquisition costs in our self service business grew at a greater rate than revenue as purchase costs were driven higher by increased demand for used cars and higher scrap prices. While scrap metal prices declined late in 2011, average vehicle acquisition costs did not fall as suppliers continued to demand higher prices. These vehicle acquisition factors caused a 0.5% increase in our cost of goods sold as a percentage of revenue compared to 2010. These effects were partially offset by reductions in our wholesale salvage costs as a percentage of revenue as the impact of rising vehicle costs driven by higher demand for salvage vehicles was offset by our increased recovery on cores and benefits of a net increase in scrap prices over prior year levels.

Gross Margin. As a percentage of revenue, gross margin decreased to 42.6% from 44.3%. The decrease in our gross margin percentage was due primarily to the factors noted in *Revenue* and *Cost of Goods Sold* above.

Facility and Warehouse Expenses. As a percentage of revenue, facility and warehouse expenses declined to 9.0% of revenue in 2011 from 9.5% in 2010. The decrease was driven by a reduction in personnel-related expenses as a percentage of revenue, which fell to 4.9% compared to 5.3% in the prior year. As we expanded our product offerings through acquisitions in complementary business lines during 2011, we were able to leverage the fixed component of facility and warehouse expenses, such as personnel costs, as we integrated the acquisitions into our existing business. The decrease in facility and warehouse expenses as a percentage of revenue was also partially a result of higher other revenue, which grew at a greater rate than personnel expenditures.

Distribution Expenses. Distribution expenses as a percentage of revenue increased by 0.2% compared to 2010 as higher fuel and freight costs offset benefits from improved utilization of our distribution employees and equipment. Rising fuel prices increased fuel expense to 1.4% of revenue in 2011 compared to 1.2% in the prior year. Higher fuel prices also impacted third party freight expense, which increased to 1.4% of revenue in 2011 from 1.2% in 2010. These increases were partially offset by improved leveraging of our distribution network, including our personnel expenditures and equipment costs, in a period of growing revenue and higher other revenue that did not require additional distribution expenditures.

Selling, General, and Administrative Expenses. As a percentage of revenue, our selling, general and administrative expenses decreased to 12.0% in 2011 from 12.6% in 2010. The decline in selling, general and administrative expenses was primarily driven by improved utilization of these costs in a period of rising revenue, including increased revenue from scrap metal and other metals that did not require additional selling or administrative expenditures. The decrease in these costs as a percentage of revenue included a reduction in selling expenses from 7.1% of revenue to 6.8% of revenue. Our general and administrative expenses, which include corporate overhead, professional fees and information technology expenses, decreased from 5.5% of revenue to 5.2% of revenue.

Restructuring and Acquisition Related Expenses. In 2011, we incurred \$7.6 million of restructuring and acquisition related expenses compared to \$0.7 million in 2010. Our 2011 expenses include \$4.0 million related to integrating our acquisition of the Akzo Nobel paint business in the second quarter of 2011 and our 2010 acquisition of Cross Canada, a Canadian aftermarket business. We also incurred \$0.4 million of integration costs related to certain of our other acquisitions. Acquisition related expenses, which consist of external costs primarily related to our acquisition of ECP effective as of October 1, 2011, totaled \$3.2 million in 2011. These acquisition related expenses included professional fees such as accounting, legal, advisory and valuation services. Restructuring charges incurred in 2010 included charges related to integration efforts from 2009 acquisitions. See Note 10, "Restructuring and Acquisition Related Expenses," to the consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K for further information on our restructuring and integration plans.

Depreciation and Amortization . As a percentage of revenue, depreciation and amortization expense was 1.5% in both 2011 and 2010. Our increased levels of property and equipment, primarily driven by capital expenditures and acquisitions as well as higher intangible amortization expense, were offset by leveraging of our existing facilities to grow revenue and acquisition related revenue growth, respectively.

Operating Income . As a percentage of revenue, operating income decreased to 11.1% in 2011 from 12.1% in 2010. The decrease in operating income as a percentage of revenue was primarily due to a decline in gross margin, offset by improved leveraging of our operating expenses.

Other Expense, Net. Total other expense, net decreased to \$25.7 million in 2011 from \$27.8 million in 2010. In 2011, our net interest expense decreased by \$5.9 million compared to 2010, which was offset by a loss on debt extinguishment of \$5.3 million. On March 25, 2011, we executed a new senior secured credit agreement, and as a result, the unamortized balance of debt issuance costs related to the previous credit agreement was written off. Interest expense decreased due to a reduction in the average effective interest rate on our bank borrowings to 3.4% in 2011 from 4.9% in 2010, resulting from lower interest rates under our new credit facility combined with the impact of lower fixed interest rates under our outstanding interest rate swaps compared to the prior year. We also recognized a net gain of \$1.4 million related to adjustments to reduce the fair value estimates of our contingent consideration liabilities. In 2011, we recognized a \$0.4 million foreign exchange gain compared to a \$0.2 million loss in the prior year. The current year gain was related to the weakening of the Canadian dollar and the Mexican peso, partially offset by a strengthening of the British pound.

Provision for Income Taxes . Our effective income tax rate in 2011 was 37.4% compared with 38.1% in 2010. The lower effective income tax rate in 2011 reflects a benefit of 0.5% relative to the prior year from our expanding international operations and a 0.3% reduction in our effective state tax rate. Our international operations, which grew in 2011 with the ECP acquisition, contributed to a lower effective tax rate as a larger proportion of our pretax income was generated in lower rate jurisdictions. Additionally, we achieved tax savings from our financing of foreign acquisitions. Our effective state tax rate declined as a result of a shift in income to lower rate jurisdictions. The effective income tax rate for the comparable prior year period included a discrete benefit of \$1.5 million resulting primarily from the revaluation of deferred taxes in connection with a legal entity reorganization. While we had no individually significant discrete items in 2011, the total benefit recognized for the year was similar to the benefit from the legal entity reorganization in 2010.

Income from Discontinued Operations, Net of Taxes. Income from discontinued operations, net of taxes, was \$2.0 million in 2010, which was primarily the result of a gain of \$2.7 million (\$1.7 million, net of tax) from the sale of two self service retail facilities on January 15, 2010. Our 2011 results do not include any impact from these discontinued operations as the facilities were closed or sold in the first quarter of 2010.

Year Ended December 31, 2010 Compared to Year Ended December 31, 2009

Revenue. Our revenue increased 20.6% to \$2.5 billion for the year ended December 31, 2010, from \$2.0 billion for the year ended December 31, 2009. The increase in revenue was primarily due to business acquisitions, higher volume of products we sold and higher revenue from scrap metal and other metals sales. Our parts and services organic revenue growth rate was 6.6%, which was composed of 4.2% organic growth in our recycled products revenue and 8.2% organic growth in our aftermarket products revenue. The higher growth in our aftermarket products organic revenue was driven by greater visibility to aftermarket products by our salvage sales force along with higher inventory levels and improved positioning within our distribution network, which created a greater volume of parts available for sale and higher fulfillment rates. Other revenue had an organic growth rate of 52.2%, primarily attributable to the effects of scrap metal and other metals prices that increased over the prior year, combined with higher sales volume. We also had a 0.4% favorable impact on revenue derived from foreign exchange on our Canadian operations.

Cost of Goods Sold. Our cost of goods sold increased 22.9%, from \$1.1 billion in 2009 to \$1.4 billion in 2010. As a percentage of revenue, cost of goods sold increased from 54.7% to 55.7%. The increase in our cost of goods sold as a percentage of revenue was due primarily to higher salvage acquisition prices in 2010, combined with an increase in revenue from scrap aluminum, which generates lower margins. Salvage acquisition prices in 2010 increased due to the expiration of the cash for clunkers program and higher overall demand for salvage vehicles at auction. The increase in salvage costs and impact of higher relative revenue from scrap aluminum were partially offset by improved aftermarket margins due to price increases and lower costs on aftermarket products due to vendor competition. Additionally, market conditions in our heavy-duty truck operations began to improve which resulted in lower heavy-duty truck inventory acquisition costs.

Gross Margin. Our gross margin increased 17.9%, from \$927.8 million in 2009 to \$1,093.5 million in 2010. Our gross margin increased primarily due to increased volume. As a percentage of revenue, gross margin decreased from 45.3% to 44.3%. The decrease in our gross margin as a percentage of revenue was due primarily to the factors noted above in *Cost of Goods Sold*.

Facility and Warehouse Expenses. Facility and warehouse expenses increased 16.4%, from \$201.1 million in 2009 to \$234.0 million in 2010. Our facility and warehouse expenses increased \$32.9 million primarily due to incremental expenses of \$17.7 million from business acquisitions (principally the acquisition of Greenleaf in October 2009) and the organic growth of our operations. As a percentage of revenue, facility and warehouse expenses decreased from 9.8% to 9.5%, primarily due to higher revenue spread over fixed facility costs.

Distribution Expenses. Distribution expenses increased 16.9%, from \$181.9 million in 2009 to \$212.7 million in 2010. Our distribution expenses increased \$30.8 million primarily due to incremental expenses of \$10.5 million from business acquisitions, \$6.8 million of higher fuel costs, \$5.3 million of higher labor and labor-related expenses, and \$9.7 million for increased variable expenses such as freight costs and truck rentals resulting from higher parts volume in 2010, partially offset by \$1.7 million lower vehicle insurance and claims cost. As a percentage of revenue, our distribution expenses decreased from 8.9% to 8.6%, primarily due to improved leverage of our distribution network, including increased revenue from scrap metal and other metals that did not require additional distribution expense.

Selling, General, and Administrative Expenses. Selling, general, and administrative expenses increased 12.1%, from \$276.7 million in 2009 to \$310.2 million in 2010. Our business acquisitions accounted for \$11.6 million of the increase, primarily in labor and labor related costs. The remaining increase in our selling, general and administrative expenses was due primarily to higher labor and labor related expenses of \$19.7 million, higher credit card and bank fees of \$1.5 million and higher advertising and promotion expenses of \$1.2 million, offset by lower legal and claims costs of \$3.2 million. As a percentage of revenue, selling, general and administrative expenses decreased from 13.5% to 12.6% primarily due to improved leverage of selling and administrative employees in a period of growing revenue, including revenue from scrap metal and other metals, that did not require additional selling, general and administrative expenditures.

Restructuring and Acquisition Related Expenses. Restructuring expenses decreased 73.8% to \$0.7 million in 2010, from \$2.6 million in 2009. The restructuring expenses in 2010 were the result of the Greenleaf acquisition, while 2009 restructuring expense was related to the integration of Keystone Automotive Industries, Inc. into existing LKQ operations. See Note 10, "Restructuring and Acquisition Related Expenses," to the consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K for a further discussion of restructuring and integration activities related to our acquisitions.

Depreciation and Amortization . Depreciation and amortization (including that reported in cost of goods sold above) increased 10.7%, from \$37.4 million in 2009 to \$41.4 million in 2010. Business acquisitions accounted for \$2.2 million of the increase in depreciation and amortization expense, while increased levels of property and equipment accounted for the remaining increase. As a percentage of revenue, depreciation and amortization decreased from 1.7% in 2009 to 1.5% in 2010.

Operating Income . Operating income increased 28.7%, from \$231.4 million in 2009 to \$297.9 million in 2010. As a percentage of revenue, operating income increased from 11.3% to 12.1%. The increase in operating income as a percentage of revenue was primarily due to improved leveraging of operating expenses over a larger revenue base, partially offset by lower gross margins in 2010 due to higher salvage acquisitions costs and higher relative revenue from scrap aluminum as noted in *Cost of Goods Sold* above.

Other (Income) Expense. Total other expense, net increased 6.2%, from \$26.1 million in 2009 to \$27.8 million in 2010. The increase in other expense, net is primarily due to the absence of a \$4.3 million gain on bargain purchase that was recorded in the fourth quarter of 2009 related to the Greenleaf acquisition, partially offset by lower net interest expense. Our average bank borrowings were approximately \$43.3 million lower in 2010 compared to 2009 due primarily to voluntary prepayments of our scheduled 2010 repayments combined with our scheduled repayments. In addition, our average effective interest rate on our bank borrowings was 4.86% in 2010 compared to 4.95% in 2009. See Note 9, "Business Combinations," to the consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K for a further discussion of the acquisition of Greenleaf and the related gain on bargain purchase.

Provision for Income Taxes . The provision for income taxes increased 31.8%, from \$78.2 million in 2009 to \$103.0 million in 2010. Our effective income tax rate was 38.1% in both 2010 and 2009. Our effective state tax rate decreased by 0.7% in 2010 as a result of a shift in income to lower rate jurisdictions. The effective rate remained flat compared to the prior year because of the absence of the rate benefit generated from the non-taxable gain on bargain purchase in 2009. The provision for income taxes in both periods was affected by discrete items. In 2009, we recognized a \$4.3 million non-taxable gain on bargain purchase related to the Greenleaf acquisition, which lowered the 2009 effective income tax rate by 0.8%. The 2010 effective tax rate included adjustments related to the revaluation of deferred taxes in connection with a legal entity reorganization in the first quarter (0.5% decrease to rate) and the establishment of valuation allowances on state tax credit carryforwards (0.2% increase to rate).

Income from Discontinued Operations, Net of Taxes. Our discontinued operations, net of taxes, generated \$2.0 million of income in 2010, compared to \$0.4 million in 2009. Income from discontinued operations increased primarily due to the gain of \$2.7 million (\$1.7 million net of tax) from the sale of two self service retail facilities to SSI on January 15, 2010.

Results of Operations—Segment Reporting

We have four operating segments: Wholesale—North America; Wholesale—Europe; Self Service; and Heavy-Duty Truck. Our operations in North America, which include our Wholesale—North America, Self Service and Heavy-Duty Truck operating segments, are aggregated into one reportable segment because they possess similar economic characteristics and have common products and services, customers, and methods of distribution. Our Wholesale—Europe operating segment, formed with our acquisition of ECP effective October 1, 2011, marks our entry into the European automotive aftermarket business, and is presented as a separate reportable segment. Although the Wholesale—Europe operating segment shares many of the characteristics of our North American operations, we have provided separate financial information as we believe this data would be beneficial to users in understanding our results.

The following table presents our financial performance, including revenue and earnings before interest, taxes, and depreciation and amortization (“EBITDA”) from continuing operations, by reportable segment for the periods indicated (in thousands):

	Year Ended December 31,		
	2011	2010	2009
Revenue			
North America	\$ 3,131,376	\$ 2,469,881	\$ 2,047,942
Europe	138,486	—	—
Total revenue	\$ 3,269,862	\$ 2,469,881	\$ 2,047,942
EBITDA			
North America	\$ 405,924	\$ 339,869	\$ 273,666
Europe	12,144	—	—
Total EBITDA	\$ 418,068	\$ 339,869	\$ 273,666

The key measure of segment profit or loss reviewed by our chief operating decision maker is EBITDA. Segment EBITDA includes revenue and expenses that are controllable by the segment. Corporate and administrative expenses are allocated to the segments based on usage. Since the European segment was initiated in the fourth quarter of 2011, its usage of the shared corporate and administrative costs has been minimal. Segment EBITDA excludes depreciation, amortization, interest (including loss on debt extinguishment) and taxes. Loss on debt extinguishment is considered a component of interest in calculating EBITDA, as the write-off of debt issuance costs is similar to the treatment of debt issuance cost amortization. See Note 16, “Segment and Geographic Information” to the consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K for a reconciliation of total EBITDA to Income from Continuing Operations.

Since we presented a single reportable segment (North America) until the acquisition of ECP effective October 1, 2011 and the North American segment represents 97% of our 2011 segment EBITDA, the discussion of the consolidated results of operations covers the factors driving the year over year performance of our North American segment. Results for our European segment will not have a comparative period until the fourth quarter of 2012. Based on these considerations, we believe discussion of our results of operations at the segment level would not provide additional understanding of our overall performance.

2012 Outlook

We estimate that full year 2012 income from continuing operations and diluted earnings per share from continuing operations, excluding the impact of any restructuring and acquisition related expenses, will be in the range of \$258 million to \$278 million and \$1.72 to \$1.85, respectively.

Liquidity and Capital Resources

Our primary sources of ongoing liquidity are cash flows from our operations and our credit facility. On March 25, 2011, we entered into a senior secured credit agreement with a syndicate of banks led by JP Morgan Chase Bank, N.A., Bank of America, N.A., RBS Citizens, N.A. and Wells Fargo Bank, N.A. (the “Original 2011 Credit Agreement”), which was amended on September 30, 2011 (as amended, the “Amended and Restated 2011 Credit Agreement”). While the representations, warranties and covenants under the Amended and Restated 2011 Credit Agreement are customary, they include limitations and conditions on our ability to, among other things, incur indebtedness, make dividend payments, repurchase our stock and make certain investments, and also require us to maintain specified financial covenants. We were in compliance with all restrictive covenants under the Amended and Restated 2011 Credit Agreement as of December 31, 2011.

The initial use of proceeds under the Original 2011 Credit Agreement included payment in full of amounts outstanding under our previous credit agreement. Under the Amended and Restated 2011 Credit Agreement, we may borrow up to \$1.4 billion, consisting of a \$950 million revolving credit facility (including up to \$500 million available in foreign currencies) and up to \$450 million of term loan borrowings. As of December 31, 2011, the outstanding obligations under the facilities were \$901.4 million, composed of \$240.6 million of term loans and \$660.7 million of revolver borrowings, compared to \$590.1 million of term loans outstanding at December 31, 2010 under the previous credit agreement. Our acquisition of ECP effective October 1, 2011, for which we drew approximately \$325.6 million, contributed to the increase in our outstanding credit facility borrowings. Our availability under the revolver at December 31, 2011, including the impact of outstanding letters of credit of \$35.4 million, was \$253.9 million. We do not expect to utilize the revolver as a primary source of funding for working capital needs as we expect our cash flows from operations to be sufficient for that purpose, but we do maintain availability as we continue to expand our facilities and network. In addition to the availability under the revolving credit facility, the Amended and Restated 2011 Credit Agreement provides for up to \$200 million in incremental term loan borrowings, which we drew in January 2012 to pay down a portion of our outstanding revolver borrowings. At December 31, 2011, cash and cash equivalents totaled \$48.2 million.

Borrowings under the Amended and Restated 2011 Credit Agreement accrue interest at variable rates, which depend on the currency and the duration of the borrowing, plus an applicable margin rate. The weighted-average interest rate on borrowings outstanding against the Amended and Restated 2011 Credit Agreement at December 31, 2011 (after giving effect to the interest rate swap contracts in force, described in Note 6, "Derivative Instruments and Hedging Activities," to the consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K) was 2.59%. The decline in our weighted average interest rate in 2011 resulted from lower fixed rates under our outstanding swaps at December 31, 2011 compared to the prior year-end and lower margins under the Amended and Restated 2011 Credit Agreement. Of our outstanding credit agreement borrowings of \$901.4 million and \$590.1 million at December 31, 2011 and 2010, respectively, \$12.5 million and \$50.0 million were classified as current maturities, respectively. After giving effect to the additional term loan borrowings in January 2012, our 2012 maturities will be \$20.0 million.

The procurement of inventory is the largest operating use of our funds. We normally pay for aftermarket product purchases at the time of shipment or on standard payment terms, depending on the manufacturer and payment options offered. Our purchases of aftermarket products totaled approximately \$836.3 million, \$576.7 million, and \$536.6 million in 2011, 2010, and 2009, respectively. We normally pay for salvage vehicles acquired at salvage auctions and under some direct procurement arrangements at the time that we take possession of the vehicles. We acquired approximately 228,000, 198,000, and 167,000 wholesale salvage vehicles in 2011, 2010 and 2009, respectively. In addition, we acquired approximately 352,000, 297,000, and 287,000 lower cost self service and crush only vehicles in 2011, 2010 and 2009, respectively. We also purchased 39,000 lower cost self service and crush only vehicles for our discontinued operations in 2009. Our heavy-duty truck purchases included 6,000, 4,000, and 4,000 heavy and medium-duty trucks in 2011, 2010, and 2009, respectively.

Net cash provided by operating activities totaled \$211.8 million for the year ended December 31, 2011, compared to \$159.2 million for the same period of 2010. In 2011, our operating income, excluding depreciation and amortization, increased by \$76.7 million compared to the prior year. Additionally, our cash interest payments were \$6.1 million lower than the prior year period due primarily to lower effective interest rates under our current secured credit agreement. These increases were partially offset by \$25.1 million in higher tax payments primarily driven by the increase in pretax income and a higher net investment in our primary working capital accounts (receivables, inventory, and payables). The net cash outflow for our primary working capital accounts increased to \$79.6 million for the year ended December 31, 2011 from \$69.9 million for the comparable prior year period, primarily due to increased inventory purchases partially offset by the timing of cash payments and collections. We expect to generate net cash outflows for our working capital accounts into 2012 as we continue to build inventory levels to support our growing revenue levels, although at a lesser amount than 2011.

Net cash used in investing activities totaled \$571.6 million for the year ended December 31, 2011, compared to \$191.6 million for the same period of 2010. We invested \$486.9 million of cash, net of cash acquired, in 21 acquisitions during 2011, including \$293.7 million of cash paid, net of cash acquired, for our acquisition of ECP in the fourth quarter. Cash payments, net of cash acquired, for our 20 acquisitions in 2010 totaled \$143.6 million. In January 2010, we completed the sale of two of our self service yards, resulting in a cash inflow, net of cash sold, of \$12.0 million. Property and equipment purchases were \$86.4 million in the year ended December 31, 2011, which is \$25.0 million greater than the property and equipment purchases in 2010. The growth in capital expenditures was driven by an increase in site improvement and capacity expansion projects compared to the prior year, as well as expenditures related to planned 2010 projects that carried over into 2011.

Net cash provided by financing activities totaled \$311.4 million for the year ended December 31, 2011, compared to \$19.0 million in 2010. In March 2011, we entered into the Original 2011 Credit Agreement, under which our initial draw of \$591.8 million (including \$250.0 million of term loan borrowings and \$341.8 million of revolver borrowings) was used to pay off amounts outstanding under the previous credit facility. The Amended and Restated Credit Agreement effective September 30, 2011 provided additional capacity under our revolving credit facility, under which we drew \$325.6 million to fund our acquisition of ECP in the fourth quarter. Additionally, we made three scheduled term loan payments totaling \$9.4 million in 2011. Related to the execution of the Original 2011 Credit Agreement on March 25, 2011 and the Amended and Restated 2011 Credit Agreement on September 30, 2011, we paid \$11.0 million of debt issuance costs. During the prior year, we had only one required quarterly term loan payment for \$7.5 million due to prepayments made in 2009. Cash generated from exercises of stock options provided \$11.9 million and \$14.0 million in 2011 and 2010, respectively. The excess tax benefit from share-based payment arrangements reduced income taxes payable by \$8.0 million and \$15.0 million in 2011 and 2010, respectively.

Net cash provided by operating activities totaled \$159.2 million in 2010, compared to \$164.0 million in 2009. In 2010, our operating income, excluding depreciation and amortization, increased by \$69.8 million relative to the same period in 2009, which was offset by a higher investment in our primary working capital accounts (receivables, inventory and accounts payable) and higher tax payments of \$39.0 million in 2010 compared to 2009. The net cash outflow for our primary working capital accounts increased from \$38.9 million in 2009 to \$69.9 million in 2010, primarily due to higher inventory purchases. Our 2010 aftermarket purchases increased due to our expansion of certain product lines and an increase of on-hand inventory to meet demand for certain products. In 2010, we also purchased a greater volume of wholesale salvage vehicles at higher average prices than 2009. Increased sales volume in our recycled and related products and services product category drove increased volume of wholesale salvage vehicle purchases in 2010, as inventory levels were built up to meet demand. Our 2009 salvage purchase costs also included 20,500 lower-priced cash for clunkers vehicles.

Net cash used in investing activities totaled \$191.6 million for the year ended December 31, 2010, compared to \$102.5 million for 2009. In 2010, we invested \$143.6 million of cash in acquisitions. In 2009, we invested \$68.3 million, including \$38.8 million for the Greenleaf acquisition in October, and received net proceeds of \$3.1 million on settlements of purchase price receivables and payables related to earlier acquisitions. In 2010 and 2009, we completed the sale of certain of our self service yards, resulting in cash inflow, net of cash sold, of \$12.0 million and \$17.5 million, respectively. Property and equipment purchases were \$61.4 million in 2010, which is \$5.6 million higher than the property and equipment purchases in 2009.

Net cash provided by financing activities totaled \$19.0 million for the year ended December 31, 2010, compared to \$33.2 million net cash used by financing activities for the year ended December 31, 2009. The variance is primarily attributable to debt repayments. In 2009, we made our regularly scheduled term loan payments of \$14.9 million and also elected to prepay the first three quarters' term loan payments for 2010, totaling \$22.4 million. As a result of the prepayment in 2009, we had only one quarterly payment required in 2010 for \$7.5 million. In 2010, we had no activity on our line of credit borrowings, whereas in 2009, we repaid 2009 and earlier line of credit borrowings resulting in a net cash outflow of \$6.7 million. Repayments of other

debt, which primarily consists of notes issued for business acquisitions, were \$2.1 million for 2010, compared to \$1.7 million in the prior year. Cash generated from exercises of stock options provided \$14.0 million and \$8.2 million in 2010 and 2009, respectively. The excess tax benefit from stock-based payment arrangements reduced income taxes payable by \$15.0 million and \$9.6 million in 2010 and 2009, respectively.

As part of the consideration for certain of our business acquisitions completed in 2011, we entered into contingent consideration agreements with the selling shareholders. Under the terms of the contingent consideration agreements, additional payments will be made to the former owners if specified future events occur or conditions are met, such as meeting profitability or earnings targets. For our acquisition of ECP, we are required to pay up to an additional £55 million in the event the business achieves certain EBITDA targets during the years ending December 31, 2012 and 2013. Based on our evaluation of the likelihood of meeting these performance targets, we recorded a liability for the acquisition date fair value of the contingent consideration of \$77.5 million (£50.2 million). The acquisition date fair value of our other contingent consideration liabilities totaled \$3.7 million. We expect to fund these payments through either cash generated from operations or through draws on our revolving credit facility. In addition to these contingent consideration agreements, we issued promissory notes in connection with our business acquisitions totaling approximately \$34.2 million, \$5.5 million and \$1.2 million in 2011, 2010, and 2009, respectively. The notes bear interest at annual rates of 2.0% to 4.0%, and interest is payable at maturity or in monthly installments.

We intend to continue to evaluate markets for potential growth through the internal development of distribution centers, processing and sales facilities, and warehouses, through further integration of our facilities, and through selected business acquisitions. Our future liquidity and capital requirements will depend upon numerous factors, including the costs and timing of our internal development efforts and the success of those efforts, the costs and timing of expansion of our sales and marketing activities, and the costs and timing of future business acquisitions. Our Amended and Restated 2011 Credit Agreement provides additional sources of liquidity to fund acquisitions, which we expect will support our strategy to supplement our organic growth with acquisitions.

We believe that our current cash and equivalents, cash provided by operating activities and funds available under our Amended and Restated 2011 Credit Agreement will be sufficient to meet our current operating and capital requirements. However, we may, from time to time, raise additional funds through public or private financing, strategic relationships or other arrangements. There can be no assurance that additional funding, or refinancing of our credit facility, if needed, will be available on terms attractive to us, or at all. Furthermore, any additional equity financing may be dilutive to stockholders, and debt financing, if available, may involve restrictive covenants. Our failure to raise capital if and when needed could have a material adverse impact on our business, operating results, and financial condition.

2012 Outlook

We estimate that our capital expenditures for 2012, excluding business acquisitions, will be between \$100 million and \$115 million. We expect to use these funds for several major facility expansions, improvement of current facilities, real estate acquisitions and systems development projects. Maintenance or replacement capital expenditures are expected to be approximately 20% of the total for 2012. We anticipate that net cash provided by operating activities for 2012 will be in the range of \$250 million to \$280 million.

Off-Balance Sheet Arrangements and Future Commitments

We do not have any off-balance sheet arrangements, investments in special purpose entities or undisclosed borrowings or debt that would be required to be disclosed pursuant to Item 303 of Regulation S-K under the Securities Exchange Act of 1934. Additionally, we do not have any synthetic leases.

The following table represents our future commitments under contractual obligations as of December 31, 2011 (in millions):

	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Contractual obligations					
Long-term debt	\$ 1,053.7	\$ 53.5	\$ 124.6	\$ 874.5	\$ 1.1
Operating leases	450.7	85.0	143.3	99.3	123.1
Purchase obligations	183.6	68.0	115.6	0.0	0.0
Contingent consideration liabilities	82.4	0.6	81.7	0.1	0.0
Outstanding letters of credit	35.4	35.1	0.2	0.1	0.0
Other asset purchase commitments	12.1	11.8	0.3	0.0	0.0
Purchase price payable	5.9	5.8	0.1	0.0	0.0
Other long-term obligations					
Self-insurance reserves	37.4	18.2	12.3	4.5	2.4
Deferred compensation plans	14.1	0.0	0.0	0.0	14.1
Long term incentive plan	8.8	8.0	0.8	0.0	0.0
Liabilities for unrecognized tax benefits	5.5	0.9	2.6	0.8	1.2
Total	<u>\$ 1,889.6</u>	<u>\$ 286.9</u>	<u>\$ 481.5</u>	<u>\$ 979.3</u>	<u>\$ 141.9</u>

Our long-term debt under contractual obligations above includes interest on the balance outstanding under our variable rate credit facility as of December 31, 2011. The long term debt obligations in the above table include interest computed at the average effective rate of 2.59% as of December 31, 2011.

Our purchase obligations include open purchase orders for aftermarket inventory. These amounts include our purchase obligations under the wholesaler agreement we entered into in connection with our acquisition of the Akzo Nobel paint business in 2011. See Note 9, "Business Combinations," to the consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K for further information on our acquisition of the Akzo Nobel paint business.

Our contingent consideration liabilities above reflect the discounted estimated payments of additional consideration related to business combinations. The actual payouts will be determined at the end of the applicable performance periods based on the acquired entities' achievement of the targets specified in the purchase agreements.

Deferred compensation payments are dependent on elected payment dates. While we expect that these payments will be made more than five years from the latest balance sheet date, payments may be made earlier depending on such elections. Our deferred compensation plans are funded through investments in life insurance policies. Refer to Note 11, "Retirement Plans," to the consolidated financial statements in Part II, Item 8 of this Annual Report on Form 10-K for further information related to the deferred compensation plans and related investments.

Self-insurance reserves include estimated payments for our employee medical benefits, automobile liability, general liability, directors and officers liability, workers' compensation and property insurance.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our results of operations are exposed to changes in interest rates primarily with respect to borrowings under our credit facility, where interest rates are tied to the prime rate, the London InterBank Offered Rate, or the Canadian Dealer Offered Rate. In March 2008, we implemented a policy to manage our exposure to variable interest rates on a portion of our outstanding variable rate debt instruments through the use of interest rate swap contracts. These contracts convert a portion of our variable rate debt to fixed rate debt, matching effective and

maturity dates to specific debt instruments. All of our interest rate swap contracts have been executed with banks that we believe are creditworthy (JP Morgan Chase Bank, N.A., Bank of America, N.A., and RBS Citizens, N.A.) and are denominated in currency that matches the underlying debt instrument. Net interest payments or receipts from interest rate swap contracts will be included as adjustments to interest expense in our consolidated income statement. As of December 31, 2011, we held seven interest rate swap contracts representing a total of \$520 million of U.S. dollar-denominated notional amount debt, £50 million of pound sterling-denominated notional amount debt, and CAD \$25 million of Canadian dollar-denominated notional amount debt. In total, we had 69% and 76% of our variable rate debt on our credit facility at fixed rates at December 31, 2011 and 2010, respectively. These swaps have maturity dates ranging from October 2013 through December 2016. These contracts are designated as cash flow hedges and modify the variable rate nature of that portion of our variable rate debt. As of December 31, 2011, the fair market value of our swaps was a liability of \$10.6 million. The value of such contracts is subject to changes in interest rates.

At December 31, 2011, we had unhedged variable rate debt of \$279.2 million. Using sensitivity analysis to measure the impact of a 100 basis point movement in the interest rate, interest expense would change by \$2.8 million over the next twelve months. To the extent that we have cash investments earning interest, a portion of the increase in interest expense resulting from a variable rate change would be mitigated by higher interest income.

We are also exposed to market risk related to price fluctuations in scrap metal and other metals. Market prices of these metals affect the amount that we pay for our inventory as well as the revenue that we generate from sales of these metals. As both our revenue and costs are affected by the price fluctuations, we have a natural hedge against the changes. However, there is typically a lag between the effect on our revenue from metal price fluctuations and inventory cost changes. Therefore, we can experience positive or negative margin effects in periods of rising or falling metal prices, particularly when such prices move rapidly. During the first quarter of 2010, the steep increase in metals prices contributed to higher margins as we sold off lower cost inventory acquired in late 2009. The continuing increase in metal prices throughout 2010 and 2011 contributed to increased revenue during the year ended December 31, 2011. If market prices were to fall at a greater rate than our salvage acquisition costs, we could experience a decline in gross margin rate.

Additionally, we are exposed to currency fluctuations with respect to the purchase of aftermarket products from foreign countries. The majority of our foreign inventory purchases are with manufacturers based in Taiwan. While our transactions with manufacturers based in Taiwan are conducted in U.S. dollars, changes in the relationship between the U.S. dollar and the Taiwan dollar might impact the purchase price of aftermarket products. Our aftermarket operations in Canada, which also purchase inventory from Taiwan in U.S. dollars, are further subject to changes in the relationship between the U.S. dollar and the Canadian dollar. Our recently acquired aftermarket operations in the United Kingdom also source a portion of their inventory from Taiwan, as well as from other European countries and China, resulting in exposure to changes in the relationship of the pound sterling against the euro and the U.S. dollar. With our acquisition of ECP in the fourth quarter, we began hedging our exposure to foreign currency fluctuations for certain of our purchases for our U.K. operations. As of December 31, 2011, we held foreign currency forward contracts on a notional amount of €10.4 million and \$1.5 million. The fair value of these foreign currency forward contracts at December 31, 2011 was immaterial. We do not currently attempt to hedge our foreign currency exposure related to our foreign currency denominated inventory purchases in our North American operations, and we may not be able to pass on any price increases to our customers.

Other than a portion of our foreign currency denominated inventory purchases in the U.K., we do not attempt to hedge our foreign currency risk related to our foreign operations. Under the terms of our Amended and Restated 2011 Credit Agreement, we have amounts outstanding against our revolver facility denominated in pounds sterling for £67.0 million and Canadian dollars for CAD \$36.3 million as of December 31, 2011. We have elected not to hedge the foreign currency risk related to these borrowings as we generate pound sterling and Canadian dollar cash flows that can be used to fund debt payments.

INDEX TO FINANCIAL STATEMENTS

LKQ CORPORATION AND SUBSIDIARIES

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of LKQ Corporation:

We have audited the accompanying consolidated balance sheets of LKQ Corporation and subsidiaries (the "Company") as of December 31, 2011 and 2010, and the related consolidated statements of income, stockholders' equity and other comprehensive income, and cash flows for each of the three years in the period ended December 31, 2011. Our audits also included the financial statement schedule listed in the Index at Item 15. These consolidated financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of LKQ Corporation and subsidiaries as of December 31, 2011 and 2010, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2011, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2011, based on the criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 27, 2012 expressed an unqualified opinion on the Company's internal control over financial reporting.

/s/ DELOITTE & TOUCHE LLP

Deloitte & Touche LLP

Chicago, Illinois
February 27, 2012

LKQ CORPORATION AND SUBSIDIARIES
Consolidated Balance Sheets
(In thousands, except share and per share data)

	December 31,	
	2011	2010
Assets		
Current Assets:		
Cash and equivalents	\$ 48,247	\$ 95,689
Receivables, net	281,764	191,085
Inventory	736,846	492,688
Deferred income taxes	45,690	32,506
Prepaid income taxes	17,597	10,923
Prepaid expenses and other current assets	19,591	13,985
Total Current Assets	1,149,735	836,876
Property and Equipment, net	424,098	331,312
Intangible Assets		
Goodwill	1,476,063	1,032,973
Other intangible assets, net	108,910	69,302
Other Assets	40,898	29,046
Total Assets	\$ 3,199,704	\$ 2,299,509
Liabilities and Stockholders' Equity		
Current Liabilities:		
Accounts payable	\$ 210,875	\$ 76,437
Accrued expenses		
Accrued payroll-related liabilities	53,256	41,376
Self-insurance reserves	18,226	16,820
Other accrued expenses	59,543	25,832
Other current liabilities	24,481	9,224
Current portion of long-term obligations	29,524	52,888
Liabilities of discontinued operations	1,788	2,744
Total Current Liabilities	397,693	225,321
Long-Term Obligations, Excluding Current Portion	926,552	548,066
Deferred Income Taxes	88,796	66,059
Contingent Consideration Liabilities	81,782	1,500
Other Noncurrent Liabilities	60,796	44,402
Commitments and Contingencies		
Stockholders' Equity:		
Common stock, \$0.01 par value, 500,000,000 shares authorized, 146,948,608 and 145,466,575 shares issued and outstanding at December 31, 2011 and 2010, respectively.	1,470	1,455
Additional paid-in capital	902,782	869,798
Retained earnings	748,794	538,530
Accumulated other comprehensive (loss) income	(8,961)	4,378
Total Stockholders' Equity	1,644,085	1,414,161
Total Liabilities and Stockholders' Equity	\$ 3,199,704	\$ 2,299,509

The accompanying notes are an integral part of the consolidated financial statements.

LKQ CORPORATION AND SUBSIDIARIES

Consolidated Statements of Income
(In thousands, except per share data)

	Year Ended December 31,		
	2011	2010	2009
Revenue	\$ 3,269,862	\$ 2,469,881	\$ 2,047,942
Cost of goods sold	1,877,869	1,376,401	1,120,129
Gross margin	1,391,993	1,093,480	927,813
Facility and warehouse expenses	293,423	233,993	201,056
Distribution expenses	287,626	212,718	181,919
Selling, general and administrative expenses	391,942	310,228	276,723
Restructuring and acquisition related expenses	7,590	668	2,554
Depreciation and amortization	49,929	37,996	34,113
Operating income	361,483	297,877	231,448
Other expense (income):			
Interest expense	24,307	29,765	32,252
Interest income	(1,860)	(1,449)	(1,353)
Gain on bargain purchase	—	—	(4,339)
Loss on debt extinguishment	5,345	—	—
Change in fair value of contingent consideration liabilities	(1,408)	—	—
Other income, net	(672)	(564)	(429)
Total other expense, net	25,712	27,752	26,131
Income from continuing operations before provision for income taxes	335,771	270,125	205,317
Provision for income taxes	125,507	103,007	78,180
Income from continuing operations	210,264	167,118	127,137
Discontinued operations:			
Income (loss) from discontinued operations, net of taxes	—	224	(2,088)
Gain on sale of discontinued operations, net of taxes	—	1,729	2,472
Income from discontinued operations	—	1,953	384
Net income	\$ 210,264	\$ 169,071	\$ 127,521
Basic earnings per share(a):			
Income from continuing operations	\$ 1.44	\$ 1.17	\$ 0.90
Income from discontinued operations	—	0.01	0.00
Total	\$ 1.44	\$ 1.18	\$ 0.91
Diluted earnings per share(a):			
Income from continuing operations	\$ 1.42	\$ 1.15	\$ 0.88
Income from discontinued operations	—	0.01	0.00
Total	\$ 1.42	\$ 1.16	\$ 0.89

(a) The sum of the individual earnings per share amounts may not equal the total due to rounding.

The accompanying notes are an integral part of the consolidated financial statements.

LKQ CORPORATION AND SUBSIDIARIES

Consolidated Statements of Cash Flows
(In thousands)

	Year Ended December 31,		
	2011	2010	2009
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	\$ 210,264	\$ 169,071	\$ 127,521
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	54,505	41,428	38,062
Stock-based compensation expense	13,107	9,974	7,283
Deferred income taxes	9,302	8,963	5,882
Excess tax benefit from stock-based payments	(7,973)	(15,000)	(9,628)
Amortization of debt issuance costs	2,013	2,322	2,457
Loss on debt extinguishment	5,345	—	—
Gain on sale of discontinued operations	—	(2,744)	(3,924)
Gain on bargain purchase	—	—	(4,339)
Loss on asset impairment	—	1,265	3,539
Other	(802)	(890)	678
Changes in operating assets and liabilities, net of effects from acquisitions and divestitures:			
Receivables	(18,074)	(12,309)	(384)
Inventory	(90,091)	(67,795)	(20,428)
Prepaid expenses and other assets	(5,094)	(5,240)	(5,358)
Accounts payable	28,589	10,156	(18,067)
Accrued expenses	(3,338)	8,257	9,107
Prepaid income taxes/income taxes payable	2,251	7,492	24,111
Deferred revenue	35	(201)	1,386
Other noncurrent liabilities	11,733	4,434	6,104
Net cash provided by operating activities	<u>211,772</u>	<u>159,183</u>	<u>164,002</u>
CASH FLOWS FROM INVESTING ACTIVITIES:			
Purchases of property and equipment	(86,416)	(61,438)	(55,870)
Proceeds from sales of property and equipment	1,743	1,441	1,070
Proceeds from sale of businesses, net of cash sold	—	11,992	17,477
Cash used in acquisitions, net of cash acquired	(486,934)	(143,578)	(65,171)
Net cash used in investing activities	<u>(571,607)</u>	<u>(191,583)</u>	<u>(102,494)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from exercise of stock options	11,919	13,962	8,247
Excess tax benefit from stock-based payments	7,973	15,000	9,628
Debt issuance costs	(11,048)	(419)	(310)
Borrowings under revolving credit facility	1,111,369	—	2,309
Repayments under revolving credit facility	(453,867)	—	(9,045)
Borrowings under term loan	250,000	—	—
Repayments under term loans	(600,464)	(7,476)	(42,291)
Repayments of other long-term debt	(4,471)	(2,105)	(1,703)
Net cash provided by (used in) financing activities	<u>311,411</u>	<u>18,962</u>	<u>(33,165)</u>
Effect of exchange rate changes on cash and equivalents	982	221	1,496
Net (decrease) increase in cash and equivalents	(47,442)	(13,217)	29,839
Cash and equivalents, beginning of period	95,689	108,906	79,067
Cash and equivalents, end of period	<u>\$ 48,247</u>	<u>\$ 95,689</u>	<u>\$ 108,906</u>
Supplemental disclosure of cash flow information:			
Purchase price payable, including notes issued in connection with business acquisitions	\$ 42,865	\$ 11,889	\$ 2,324
Contingent consideration liabilities	81,239	2,000	—
Stock issued in connection with business acquisitions	—	14,945	—
Debt assumed with business acquisitions	13,564	—	—
Cash paid for income taxes, net of refunds	113,433	88,294	49,287
Cash paid for interest	21,354	27,421	29,530
Property and equipment acquired under capital leases	414	—	3,404
Property and equipment purchases not yet paid	3,567	1,425	87

The accompanying notes are an integral part of the consolidated financial statements.

LKQ CORPORATION AND SUBSIDIARIES
Consolidated Statements of Stockholders' Equity and Other Comprehensive Income
(In thousands)

	Common Stock		Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares Issued	Amount				
BALANCE, January 1, 2009	139,921	\$ 1,399	\$ 790,933	\$ 241,938	\$ (13,764)	\$ 1,020,506
Net income	—	—	—	127,521	—	127,521
Unrealized loss on pension plan, net of tax	—	—	—	—	(129)	(129)
Net reduction of unrealized loss on fair value of interest rate swap agreements, net of tax	—	—	—	—	2,305	2,305
Foreign currency translation	—	—	—	—	4,191	4,191
Total comprehensive income	—	—	—	—	—	133,888
Restricted stock granted	50	1	(1)	—	—	—
Stock issued as director compensation	18	—	290	—	—	290
Stock-based compensation expense	—	—	6,993	—	—	6,993
Exercise of stock options	2,016	20	8,227	—	—	8,247
Excess tax benefit from stock-based payments	—	—	9,510	—	—	9,510
BALANCE, December 31, 2009	142,005	\$ 1,420	\$ 815,952	\$ 369,459	\$ (7,397)	\$ 1,179,434
Net income	—	—	—	169,071	—	169,071
Reversal of unrealized gain on pension plan, net of tax	—	—	—	—	(15)	(15)
Net reduction of unrealized loss/increase in unrealized gain on fair value of interest rate swap agreements, net of tax	—	—	—	—	8,712	8,712
Foreign currency translation	—	—	—	—	3,078	3,078
Total comprehensive income	—	—	—	—	—	180,846
Stock issued in business acquisitions	690	7	14,938	—	—	14,945
Stock issued as director compensation	14	—	290	—	—	290
Stock-based compensation expense	—	—	9,684	—	—	9,684
Exercise of stock options	2,758	28	13,934	—	—	13,962
Excess tax benefit from stock-based payments	—	—	15,000	—	—	15,000
BALANCE, December 31, 2010	145,467	\$ 1,455	\$ 869,798	\$ 538,530	\$ 4,378	\$ 1,414,161

LKQ CORPORATION AND SUBSIDIARIES
Consolidated Statements of Stockholders' Equity and Other Comprehensive Income—(Continued)
(In thousands)

	Common Stock		Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares Issued	Amount				
BALANCE, December 31, 2010	145,467	\$ 1,455	\$ 869,798	\$ 538,530	\$ 4,378	\$ 1,414,161
Net income	—	—	—	210,264	—	210,264
Net reduction of unrealized gain/increase in unrealized loss on fair value of interest rate swap agreements, net of tax	—	—	—	—	(9,066)	(9,066)
Foreign currency translation	—	—	—	—	(4,273)	(4,273)
Total comprehensive income	—	—	—	—	—	196,925
Restricted stock units vested	82	1	(1)	—	—	—
Stock issued as director compensation	16	—	399	—	—	399
Stock-based compensation expense	—	—	12,708	—	—	12,708
Exercise of stock options	1,384	14	11,905	—	—	11,919
Excess tax benefit from stock-based payments	—	—	7,973	—	—	7,973
BALANCE, December 31, 2011	146,949	\$ 1,470	\$ 902,782	\$ 748,794	\$ (8,961)	\$ 1,644,085

The accompanying notes are an integral part of the consolidated financial statements.

LKQ CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1. Business

The financial statements presented in this report represent the consolidation of LKQ Corporation, a Delaware corporation, and its subsidiaries. LKQ Corporation is a holding company and all operations are conducted by subsidiaries. When the terms "the Company," "we," "us," or "our" are used in this document, those terms refer to LKQ Corporation and its consolidated subsidiaries.

We provide replacement parts, components and systems needed to repair vehicles (cars and trucks). We are the nation's largest provider of alternative vehicle collision replacement products, and a leading provider of alternative vehicle mechanical replacement products. We also have operations in the United Kingdom, Canada, Mexico and Central America. In total, we operate more than 440 facilities.

As described in Note 3, "Discontinued Operations," during 2009, we sold, agreed to sell or closed certain of our self service facilities. These facilities qualified for treatment as discontinued operations. The financial results and assets and liabilities of these facilities are segregated from our continuing operations and presented as discontinued operations in the Consolidated Balance Sheets and Consolidated Statements of Income for all periods presented.

Note 2. Summary of Significant Accounting Policies

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of LKQ Corporation and its subsidiaries. All intercompany transactions and accounts have been eliminated.

Use of Estimates

In preparing our financial statements in conformity with accounting principles generally accepted in the United States we are required to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Revenue Recognition

The majority of our revenue is derived from the sale of aftermarket and recycled products. Revenue is recognized when the products are shipped or picked up and title has transferred, subject to an allowance for estimated returns, discounts and allowances that we estimate based upon historical information. We recorded a reserve for estimated returns, discounts and allowances of approximately \$22.8 million and \$18.2 million at December 31, 2011 and 2010, respectively. We present taxes assessed by governmental authorities collected from customers on a net basis. Therefore, the taxes are excluded from revenue and are shown as a liability on our Consolidated Balance Sheet until remitted. Revenue from the sale of separately-priced extended warranty contracts is reported as deferred revenue and recognized ratably over the term of the contracts or three years in the case of lifetime warranties.

Shipping & Handling

Revenue also includes amounts billed to customers related to shipping and handling of approximately \$23.9 million, \$17.3 million and \$15.5 million during the years ended December 31, 2011, 2010 and 2009, respectively. Distribution expenses in the accompanying Consolidated Statements of Income are the costs incurred to prepare and deliver products to customers.

Cash and Equivalents

We consider all highly liquid investments with original maturities of 90 days or less to be cash equivalents. Cash equivalents are carried at cost, which approximates market value. Our cash equivalents primarily include holdings in money market funds and overnight securities. We did not hold any cash equivalents at December 31, 2011, while cash equivalents at December 31, 2010 were \$57.2 million.

Receivables and Allowance for Doubtful Accounts

In the normal course of business, we extend credit to customers after a review of each customer's credit history. We recorded a reserve for uncollectible accounts of approximately \$8.3 million and \$6.9 million at December 31, 2011 and 2010, respectively. The reserve is based upon the aging of the accounts receivable, our assessment of the collectability of specific customer accounts and historical experience. Receivables are written off once collection efforts have been exhausted. Recoveries of receivables previously written off are recorded when received.

Concentrations of Credit Risk

Financial instruments that potentially subject us to significant concentration of credit risk consist primarily of cash and equivalents and accounts receivable. We control our exposure to credit risk associated with these instruments by (i) placing our cash and equivalents with several major financial institutions; (ii) holding high-quality financial instruments; and (iii) maintaining strict policies over credit extension that include credit evaluations, credit limits and monitoring procedures. In addition, our overall credit risk with respect to accounts receivable is limited to some extent because our customer base is composed of a large number of geographically diverse customers.

Inventory

Our inventory includes aftermarket and refurbished vehicle replacement products, salvage and remanufactured vehicle replacement products and core facilities inventory. A core is a recycled automotive part that is not suitable for sale as a replacement part without further refurbishing or remanufacturing work.

An aftermarket product is a new vehicle product manufactured by a company other than the original equipment manufacturer. Cost is established based on the average price we pay for parts, and includes expenses incurred for freight and overhead costs. For items purchased from foreign companies, import fees and duties and transportation insurance are also included. Refurbished inventory cost is based on the average price we pay for cores, and includes expenses incurred for freight, refurbishing costs and overhead.

A salvage product is a recycled vehicle part suitable for sale as a replacement part. Salvage inventory is recorded at the lower of cost or market. Cost is established based upon the price we pay for a vehicle, including auction, storage and towing fees, as well as expenditures for buying and dismantling. Inventory carrying value is determined using the average cost to sales percentage at each of our facilities and applying that percentage to the facility's inventory at expected selling prices. The average cost to sales percentage is derived from each facility's historical vehicle profitability for salvage vehicles purchased at auction or from contracted rates for salvage vehicles acquired under certain direct procurement arrangements. Remanufactured inventory cost is based upon the price paid for cores, and also includes expenses incurred for freight, direct manufacturing costs and overhead.

For all inventory, carrying value is reduced regularly to the lower of cost or market to reflect the age of the inventory and current anticipated demand. If actual demand differs from our estimates, additional reductions to inventory carrying value would be necessary in the period such determination is made.

Inventory consists of the following (in thousands):

	December 31,	
	2011	2010
Aftermarket and refurbished products	\$ 445,787	\$ 274,728
Salvage and remanufactured products	282,106	209,514
Core facilities inventory	8,953	8,446
	<u>\$ 736,846</u>	<u>\$ 492,688</u>

Property and Equipment

Property and equipment are recorded at cost. Expenditures for major additions and improvements that extend the useful life of the related asset are capitalized. As property and equipment are sold or retired, the applicable cost and accumulated depreciation are removed from the accounts and any resulting gain or loss thereon is recognized. Construction in progress consists primarily of building and land improvements at our existing facilities. Depreciation is calculated using the straight-line method over the estimated useful lives or, in the case of leasehold improvements, the term of the related lease and reasonably assured renewal periods, if shorter.

The internal and external costs incurred to develop internal use computer software during the application development stage of the implementation, including the design of the chosen path, are capitalized. Other costs, including expenses incurred during the preliminary project stage, training expenses, data conversion costs and expenses incurred in the post implementation stage are expensed in the period incurred. Capitalized costs are amortized ratably over the useful life of the software when the software becomes operational. Upgrades and enhancements to internal use software are capitalized only if the costs result in additional functionality. We do not plan to sell or market our internal use computer software to third parties.

Our estimated useful lives are as follows:

Land improvements	10-20 years
Buildings and improvements	20-40 years
Furniture, fixtures and equipment	3-20 years
Computer equipment and software	3-10 years
Vehicles and trailers	3-10 years

Property and equipment consists of the following (in thousands):

	December 31,	
	2011	2010
Land and improvements	\$ 81,170	\$ 71,931
Buildings and improvements	119,414	103,198
Furniture, fixtures and equipment	192,514	145,196
Computer equipment and software	79,195	63,341
Vehicles and trailers	40,825	27,218
Leasehold improvements	69,079	41,939
	<u>582,197</u>	<u>452,823</u>
Less—Accumulated depreciation	(179,950)	(142,401)
Construction in progress	21,851	20,890
	<u>\$ 424,098</u>	<u>\$ 331,312</u>

Intangible Assets

Intangible assets consist primarily of goodwill (the cost of purchased businesses in excess of the fair value of the identifiable net assets acquired), and other specifically identifiable intangible assets such as trade names, trademarks, covenants not to compete and customer relationships.

Goodwill is tested for impairment at least annually, and we performed annual impairment tests during the fourth quarters of 2011, 2010 and 2009. With the decision to sell a portion of our self service operations (as described in Note 3, "Discontinued Operations"), we also conducted a goodwill impairment test as of September 30, 2009 for both the allocated goodwill associated with the facilities to be disposed of and our ongoing self service reporting unit. The results of all of these tests indicated that goodwill was not impaired.

The changes in the carrying amount of goodwill are as follows (in thousands):

Balance as of January 1, 2009	\$ 907,218
Business acquisitions and adjustments to previously recorded goodwill	26,137
Exchange rate effects	5,428
Balance as of December 31, 2009	\$ 938,783
Business acquisitions and adjustments to previously recorded goodwill	91,757
Exchange rate effects	2,433
Balance as of December 31, 2010	\$ 1,032,973
Business acquisitions and adjustments to previously recorded goodwill	442,208
Exchange rate effects	882
Balance as of December 31, 2011	<u>\$ 1,476,063</u>

In 2009, we adjusted previously recorded goodwill related to the Pick-Your-Part Auto Wrecking ("PYP") acquisition by \$3.2 million, primarily related to various pre-acquisition liabilities.

In 2011, we finalized the valuation of certain intangible assets acquired related to our 2010 acquisitions. As these adjustments did not have a material impact on our financial position or results of operations, we recorded these adjustments to goodwill and amortization expense in 2011.

The components of other intangibles are as follows (in thousands):

	December 31, 2011			December 31, 2010		
	Gross Carrying Amount	Accumulated Amortization	Net	Gross Carrying Amount	Accumulated Amortization	Net
Trade names and trademarks	\$ 115,954	\$ (16,305)	\$ 99,649	\$ 75,661	\$ (12,020)	\$ 63,641
Covenants not to compete	3,194	(918)	2,276	2,688	(1,382)	1,306
Customer relationships	10,050	(3,065)	6,985	4,355	—	4,355
	<u>\$ 129,198</u>	<u>\$ (20,288)</u>	<u>\$ 108,910</u>	<u>\$ 82,704</u>	<u>\$ (13,402)</u>	<u>\$ 69,302</u>

In 2011, we recorded \$40.1 million of trade names, \$1.5 million of covenants not to compete and \$5.7 million of customer relationships resulting from our 2011 acquisitions and adjustments to certain preliminary intangible asset valuations from our 2010 acquisitions. The trade names recorded in 2011 included \$39.3 million for the Euro Car Parts trade name related to our acquisition of Euro Car Parts Holdings Limited ("ECP") effective October 1, 2011. In 2010, we recognized \$0.9 million of trade names, \$1.0 million of covenants not to compete, and \$4.4 million of customer relationships resulting from our acquisitions during the year. Trade names are amortized over a useful life ranging from 10 to 30 years on a straight-line basis. Covenants not to compete are

amortized over the lives of the respective agreements, which range from one to five years, on a straight-line basis. Customer relationships are amortized over the expected period to be benefitted (5 to 10 years) on either a straight-line or accelerated basis. Amortization expense for intangibles was approximately \$7.9 million, \$4.2 million and \$4.1 million during the years ended December 31, 2011, 2010 and 2009, respectively. Estimated amortization expense for each of the five years in the period ending December 31, 2016 is \$8.4 million, \$7.7 million, \$7.0 million, \$6.3 million and \$5.6 million, respectively.

Impairment of Long-Lived Assets

Long-lived assets are reviewed for possible impairment whenever events or circumstances indicate that the carrying amount of such assets may not be recoverable. If such review indicates that the carrying amount of long-lived assets is not recoverable, the carrying amount of such assets is reduced to fair value. During the year ended December 31, 2010, we recognized impairment charges on certain long-lived assets during the normal course of business of \$1.3 million. There were no adjustments to the carrying value of long-lived assets of continuing operations during the years ended December 31, 2011 or 2009.

Fair Value of Financial Instruments

Our debt is reflected on the balance sheet at cost. As discussed in Note 5, "Long-Term Obligations," we entered into a new senior secured credit agreement on March 25, 2011, which was subsequently amended and restated effective September 30, 2011. Based on current market conditions, our interest rate margins are below the rate available in the market, which causes the fair value of our debt to fall below the carrying value. The fair value of our credit facility borrowings is approximately \$893 million at December 31, 2011, as compared to the carrying value of \$901.4 million. At December 31, 2010, the fair value of our borrowings under the previous credit agreement reasonably approximated the carrying value of \$590.1 million. We estimated the fair value of our credit facility borrowings by calculating the upfront cash payment a market participant would require to assume our obligations. The upfront cash payment, excluding any issuance costs, is the amount that a market participant would be able to lend at December 31, 2011 and 2010 to an entity with a credit rating similar to ours and achieve sufficient cash inflows to cover the scheduled cash outflows under our credit facility.

The carrying amounts of our cash and equivalents, net trade receivables and accounts payable approximate fair value.

We apply the market and income approaches to value our financial assets and liabilities, which include the cash surrender value of life insurance, deferred compensation liabilities, interest rate swaps and contingent consideration liabilities. Required fair value disclosures are included in Note 7, "Fair Value Measurements."

Product Warranties

Some of our salvage mechanical products are sold with a standard six month warranty against defects. Additionally, some of our remanufactured engines are sold with a standard three year warranty against defects. We record the estimated warranty costs at the time of sale using historical warranty claim information to project future warranty claims activity and related expenses. The changes in the warranty reserve are as follows (in thousands):

Balance as of January 1, 2010	\$ 604
Warranty expense	9,351
Warranty claims	(8,882)
Business acquisitions	990
Balance as of December 31, 2010	<u>\$ 2,063</u>
Warranty expense	22,364
Warranty claims	(20,802)
Business acquisitions	3,722
Balance as of December 31, 2011	<u>\$ 7,347</u>

Our 2011 and 2010 warranty expense reflects \$8.5 million and \$0.2 million of expense related to our engine remanufacturing operations, which we began in 2010 through an acquisition in the fourth quarter, and subsequently expanded through two additional acquisitions in 2011.

Self-Insurance Reserves

We self-insure a portion of employee medical benefits under the terms of our employee health insurance program. We purchase certain stop-loss insurance to limit our liability exposure. We also self-insure a portion of our property and casualty risk, which includes automobile liability, general liability, directors and officers liability, workers' compensation and property coverage, under deductible insurance programs. The insurance premium costs are expensed over the contract periods. A reserve for liabilities associated with these losses is established for claims filed and claims incurred but not yet reported based upon our estimate of ultimate cost, which is calculated using analyses of historical data. We monitor new claims and claim development as well as trends related to the claims incurred but not reported in order to assess the adequacy of our insurance reserves. Total self-insurance reserves were \$37.4 million and \$32.9 million, including \$18.2 million and \$16.8 million classified in current liabilities, as of December 31, 2011 and 2010, respectively. The remaining balances of self-insurance reserves are classified as Other Noncurrent Liabilities, which reflects management's estimates of when claims will be paid. The reserves presented on the Consolidated Balance Sheets are net of claims deposits of \$0.5 million and \$0.6 million, at December 31, 2011 and 2010, respectively. In addition to these claims deposits, we had outstanding letters of credit of \$31.8 million and \$24.2 million at December 31, 2011 and 2010, respectively, to guarantee self-insurance claims payments. While we do not expect the amounts ultimately paid to differ significantly from our estimates, our insurance reserves and corresponding expenses could be affected if future claims experience differs significantly from historical trends and assumptions.

Income Taxes

Current income taxes are provided on income reported for financial reporting purposes, adjusted for transactions that do not enter into the computation of income taxes payable in the same year. Deferred income taxes have been provided to show the effect of temporary differences between the tax bases of assets and liabilities and their reported amounts in the financial statements. A valuation allowance is provided for deferred tax assets if it is more likely than not that these items will either expire before we are able to realize their benefit or that future deductibility is uncertain.

We recognize the benefits of uncertain tax positions taken or expected to be taken in tax returns in the provision for income taxes only for those positions that are more likely than not to be realized. We follow a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon ultimate settlement. We consider many factors when evaluating and estimating our tax positions and tax benefits, which may require periodic adjustments and which may not accurately forecast actual outcomes. Our policy is to include interest and penalties associated with income tax obligations in income tax expense.

U.S. federal income taxes are not provided on our interest in undistributed earnings of foreign subsidiaries when it is management's intent that such earnings will remain invested in those subsidiaries or other foreign subsidiaries. Taxes will be provided on these earnings in the period in which a decision is made to repatriate the earnings.

Depreciation Expense

Included in Cost of Goods Sold is depreciation expense associated with refurbishing, remanufacturing, our furnace operations and our distribution centers.

Rental Expense

We recognize rental expense on a straight-line basis over the respective lease terms for all of our operating leases.

Foreign Currency Translation

For most of our foreign operations, the local currency is the functional currency. Assets and liabilities are translated into U.S. dollars at the period-ending exchange rate. Statements of Income amounts are translated to U.S. dollars using average exchange rates during the period. Translation gains and losses are reported as a component of Accumulated Other Comprehensive Income (Loss) in stockholders' equity.

Recent Accounting Pronouncements

In September 2011, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2011-08, "Testing Goodwill for Impairment," which grants entities the option to first perform a qualitative assessment of whether it is more likely than not that a reporting unit's fair value is less than its carrying value. If an entity concludes that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, the entity would be required to perform the two-step impairment test for the reporting unit. The ASU is effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. Early adoption is permitted, and we elected to early adopt this guidance for our 2011 annual impairment test during the fourth quarter. Since this ASU did not change the accounting guidance for testing goodwill if the "more likely than not" qualitative threshold is met, the adoption of this guidance did not affect our financial position, results of operations or cash flows.

In June 2011, the FASB released ASU No. 2011-05, "Presentation of Comprehensive Income," which eliminates the option to present the components of other comprehensive income in the statement of changes in stockholders' equity. Instead, entities will have the option to present the components of net income, the components of other comprehensive income and total comprehensive income in a single continuous statement or in two separate but consecutive statements. In addition, this update requires entities to present the reclassification adjustments out of accumulated other comprehensive income by component in both the statement where net income is presented and the statement where other comprehensive income is presented. However, in December 2011, the FASB issued ASU No. 2011-12, "Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in Accounting Standards Update No. 2011-05," which indefinitely deferred this provision of ASU 2011-05. The amendments do not change the items reported in other comprehensive income or when an item of other comprehensive income is reclassified to net income. This guidance is effective for fiscal years, and interim periods within those years, beginning after December 15, 2011, and will be applied retrospectively. As this guidance only revises the presentation of comprehensive income, the adoption of this guidance will not affect our financial position, results of operations or cash flows.

In May 2011, the FASB issued ASU No. 2011-04, "Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs." This update provides clarification on existing fair value measurement requirements, amends existing guidance primarily related to fair value measurements for financial instruments, and requires enhanced disclosures on fair value measurements. The additional disclosures are specific to Level 3 fair value measurements, transfers between Level 1 and Level 2 of the fair value hierarchy, financial instruments not measured at fair value and use of an asset measured or disclosed at fair value differing from its highest and best use. This ASU is effective for interim and annual periods beginning after December 15, 2011, and will be applied prospectively. We are currently assessing the impact that the adoption of ASU No. 2011-04 will have on our financial position, results of operations and cash flows.

Effective January 1, 2011, we adopted FASB ASU 2010-29, "Disclosure of Supplementary Pro Forma Information for Business Combinations," which clarifies the disclosure requirements for pro forma financial

information related to a material business combination or a series of immaterial business combinations that are material in the aggregate. The guidance clarifies that the pro forma disclosures are prepared assuming the business combination occurred at the start of the prior annual reporting period. Additionally, a narrative description of the nature and amount of material, non-recurring pro forma adjustments would be required. As this newly issued accounting standard only requires enhanced disclosure, the adoption of this standard did not impact our financial position, results of operations or cash flows.

Note 3. Discontinued Operations

On October 1, 2009, we sold to Schnitzer Steel Industries, Inc. (“SSI”) four self service retail facilities in Oregon and Washington and certain business assets related to two self service facilities in Northern California and a self service facility in Portland, Oregon for \$17.5 million, net of cash sold. We recognized a gain on the sale of approximately \$2.5 million, net of tax, in our fourth quarter 2009 results. Goodwill totaling \$9.9 million was included in the cost basis of net assets disposed when determining the gain on sale. In the fourth quarter of 2009, we closed the two self service facilities in Northern California and converted the self service operation in Portland to a wholesale recycling business.

On January 15, 2010, we also sold to SSI two self service retail facilities in Dallas, Texas for \$12.0 million. We recognized a gain on the sale of approximately \$1.7 million, net of tax, in our first quarter 2010 results. Goodwill totaling \$6.7 million was included in the cost basis of net assets disposed when determining the gain on sale.

The self service facilities that we sold or closed are reported as discontinued operations for all periods presented. As of December 31, 2011 and 2010, we had accrued liabilities applicable to discontinued operations of \$1.8 million and \$2.7 million, respectively, included in the Consolidated Condensed Balance Sheets. These liabilities were primarily composed of accrued restructuring expenses for the excess lease payments (net of estimated sublease income) and facility closure costs related to two of the closed self service facilities.

Results of operations for the discontinued operations are as follows (in thousands):

	Year Ended December 31,		
	2011	2010	2009
Revenue	\$ —	\$ 686	\$ 23,957
Income (loss) before income tax provision (benefit)	\$ —	\$ 355	\$ (3,314)
Income tax provision (benefit)	—	131	(1,226)
Income (loss) from discontinued operations, net of taxes, before gain on sale of discontinued operations	—	224	(2,088)
Gain on sale of discontinued operations, net of taxes of \$1,015 and \$1,452 in 2010 and 2009, respectively	—	1,729	2,472
Income from discontinued operations, net of taxes	\$ —	\$ 1,953	\$ 384

Our decision to close the two self service facilities in Northern California represented a triggering event that required us to evaluate the long-lived assets at these facilities for impairment. The pretax loss from discontinued operations in the year ended December 31, 2009 includes a fixed asset impairment charge of \$3.5 million primarily related to leasehold improvements that are not recoverable.

Note 4. Equity Incentive Plans

We have two stock-based compensation plans, the Stock Option and Compensation Plan for Non-Employee Directors (the “Director Plan”) and the LKQ Corporation 1998 Equity Incentive Plan (the “Equity Incentive Plan”). Under the Director Plan, which was adopted by our Board of Directors in June 2003 and approved by our stockholders in September 2003, shares of LKQ common stock may be issued to directors in lieu of cash compensation. In February 1998, we adopted the Equity Incentive Plan to attract and retain employees and

consultants. Under the Equity Incentive Plan, both qualified and nonqualified stock options, stock appreciation rights, restricted stock, performance shares and performance units may be granted. On January 13, 2011, the Compensation Committee amended the Equity Incentive Plan to allow the grant of restricted stock units ("RSUs").

The total number of shares approved by our stockholders for issuance under the Equity Incentive Plan is 34.4 million shares, subject to antidilution and other adjustment provisions, which includes 6.4 million shares authorized in May 2011.

Stock options issued under the Equity Incentive Plan expire ten years from the date they are granted. Most of the options, RSUs and restricted stock granted under the Equity Incentive Plan vest over a period of five years. Vesting of the awards is subject to a continued service condition. Each RSU converts into one share of LKQ common stock on the applicable vesting date. Shares of restricted stock may not be sold, pledged or otherwise transferred until they vest. We expect to issue new shares of common stock to cover future equity grants under these plans.

A summary of transactions in our stock-based compensation plans is as follows:

	Stock Options			RSUs		Restricted Stock	
	Shares Available For Grant	Number Outstanding	Weighted Average Exercise Price	Number Outstanding	Weighted Average Grant Date Fair Value	Number Outstanding	Weighted Average Grant Date Fair Value
Balance, January 1, 2009	5,374,928	9,663,588	\$ 7.27	—	\$ —	190,000	\$ 19.14
Granted	(1,886,400)	1,836,400	12.15	—	—	50,000	18.60
Exercised	—	(2,016,306)	4.09	—	—	—	—
Vested	—	—	—	—	—	(38,000)	19.14
Cancelled	154,275	(154,275)	13.82	—	—	—	—
Balance, December 31, 2009	3,642,803	9,329,407	\$ 8.81	—	\$ —	202,000	\$ 19.00
Granted	(1,711,533)	1,711,533	19.95	—	—	—	—
Exercised	—	(2,758,155)	5.06	—	—	—	—
Vested	—	—	—	—	—	(48,000)	19.02
Cancelled	208,820	(208,820)	16.11	—	—	—	—
Balance, December 31, 2010	2,140,090	8,073,965	\$ 12.27	—	\$ —	154,000	\$ 19.00
Granted	(821,674)	—	—	821,674	23.60	—	—
Shares Issued for Director Compensation	(15,583)	—	—	—	—	—	—
Exercised	—	(1,384,019)	8.61	—	—	—	—
Vested	—	—	—	(82,431)	23.68	(48,000)	19.02
Cancelled	173,352	(150,900)	16.87	(22,452)	23.54	—	—
Additional Shares Authorized	6,400,000	—	—	—	—	—	—
Balance, December 31, 2011	7,876,185	6,539,046	\$ 12.93	716,791	\$ 23.59	106,000	\$ 18.98

In 2012, our Board of Directors granted 721,100 RSUs to employees and directors.

The following table summarizes information about expected to vest options, RSUs and restricted stock at December 31, 2011:

	Shares	Weighted Average Remaining Contractual Life (Yrs)	Intrinsic Value (in thousands)	Weighted Average Exercise Price
Stock options	6,526,736	5.6	\$ 111,978	\$ 12.92
RSUs	697,667	4.0	20,986	—
Restricted stock	106,000	1.5	3,188	—

The aggregate intrinsic value represents the total pre-tax intrinsic value based on our closing stock price of \$30.08 on December 31, 2011. This amount changes based upon the fair market value of our common stock. The aggregate intrinsic value of total outstanding RSUs and restricted stock was \$21.6 million and \$3.2 million at December 31, 2011, respectively.

The following table summarizes information about outstanding and exercisable stock options at December 31, 2011:

Range of Exercise Prices	Outstanding			Exercisable		
	Shares	Weighted Average Remaining Contractual Life (Yrs)	Weighted Average Exercise Price	Shares	Weighted Average Remaining Contractual Life (Yrs)	Weighted Average Exercise Price
\$0.75 - \$5.00	1,369,911	2.2	\$ 3.85	1,369,911	2.2	\$ 3.85
\$5.01 - \$10.00	536,180	4.0	9.24	536,180	4.0	9.24
\$10.01 - \$15.00	1,999,260	6.4	11.39	1,190,810	6.1	11.14
\$15.01 - \$20.00	2,611,695	7.2	19.57	1,136,909	6.8	19.39
\$20.01 +	22,000	6.4	21.28	14,850	6.4	21.31
	<u>6,539,046</u>	5.6	\$ 12.93	<u>4,248,660</u>	4.8	\$ 10.79

The aggregate intrinsic value of outstanding and exercisable stock options at December 31, 2011 was \$112.1 million and \$81.9 million, respectively.

The fair value of RSUs and restricted stock is based on the market price of LKQ stock on the date of issuance. When estimating forfeitures, we consider voluntary and involuntary termination behavior as well as analysis of historical forfeitures. For valuing RSUs and restricted stock, we used a forfeiture rate of 8% for grants to employees and a forfeiture rate of 0% for grants to directors and executive officers.

We did not grant any stock options during the year ended December 31, 2011. For the stock options granted during 2010 and 2009, the fair value was estimated using the Black-Scholes option-pricing model. The following table summarizes the weighted average assumptions used to compute the fair value of stock option grants:

	Year Ended December 31,	
	2010	2009
Expected life (in years)	6.4	6.3
Risk-free interest rate	3.17%	1.87%
Volatility	43.9%	44.6%
Dividend yield	0%	0%
Weighted average fair value of options granted	\$9.54	\$5.57

Expected life—The expected life represents the period that our stock-based awards are expected to be outstanding. At the last grant date (in 2010), we used the simplified method in developing an estimate of

expected life of stock options because we lacked sufficient data to calculate an expected life based on historical experience. Our first annual option grant with a full five year vesting period since we became a public company was on January 13, 2006, and these awards became fully vested in January 2011. Additionally, our options have a ten year life while our existence as a public company had been just over six years when the 2010 grant was made. Therefore, we use the simplified expected term method as permitted by the Securities and Exchange Commission Staff Accounting Bulletin No. 107, as amended by Staff Accounting Bulletin No. 110.

Risk-free interest rate—We base the risk-free interest rate used in the Black-Scholes option-pricing model on the implied yield available on U.S. Treasury zero-coupon issues with the same or substantially equivalent remaining term.

Expected volatility—We use the trading history and historical volatility of our common stock in determining an estimated volatility factor for the Black-Scholes option-pricing model.

Expected dividend yield—We have not declared and have no plans to declare dividends and have therefore used a zero value for the expected dividend yield in the Black-Scholes option-pricing model.

Estimated forfeitures—When estimating forfeitures, we consider voluntary and involuntary termination behavior as well as analysis of historical forfeitures. A forfeiture rate of 9.0% has been used for valuing employee option grants, while a forfeiture rate of 0% has been used for valuing director and executive officer option grants.

The total grant-date fair value of options that vested during the years ended December 31, 2011, 2010 and 2009 was approximately \$8.6 million, \$7.7 million and \$5.3 million, respectively. The total intrinsic value (market value of stock less option exercise price) of stock options exercised was \$24.8 million, \$43.2 million and \$27.2 million during the years ended December 31, 2011, 2010 and 2009, respectively.

The fair value of RSUs that vested during the year ended December 31, 2011 was \$2.2 million, while there were no RSU vestings during the years ended December 31, 2010 and 2009 as we did not issue RSUs prior to 2011. The fair value of restricted stock that vested during the years ended December 31, 2011, 2010 and 2009 was approximately \$1.1 million, \$1.0 million and \$0.4 million, respectively.

We recognize compensation expense on a straight-line basis over the requisite service period of the award. The components of pretax stock-based compensation expense are as follows (in thousands):

	Year Ended December 31,		
	2011	2010	2009
Stock options	\$ 8,129	\$ 8,771	\$ 6,219
RSUs	3,666	—	—
Restricted stock	913	913	774
Stock issued to non-employee directors	399	290	290
Total stock-based compensation expense	\$ 13,107	\$ 9,974	\$ 7,283

The following table sets forth the classification of total stock-based compensation expense included in our Consolidated Statements of Income (in thousands):

	Year Ended December 31,		
	2011	2010	2009
Cost of goods sold	\$ 327	\$ 278	\$ 47
Facility and warehouse expenses	2,391	2,069	2,620
Selling, general and administrative expenses	10,389	7,627	4,616
	13,107	9,974	7,283
Income tax benefit	(5,059)	(3,920)	(2,862)
Total stock based compensation, net of tax	\$ 8,048	\$ 6,054	\$ 4,421

We have not capitalized any stock-based compensation cost during the years ended December 31, 2011, 2010 or 2009.

As of December 31, 2011, unrecognized compensation expense related to unvested stock options, RSUs and restricted stock is expected to be recognized as follows (in thousands):

	Stock Options	RSUs	Restricted Stock	Total
2012	\$ 6,883	\$ 3,791	\$ 913	\$ 11,587
2013	4,722	3,702	208	8,632
2014	3,116	3,639	139	6,894
2015	78	3,602	—	3,680
2016	—	162	—	162
Total unrecognized compensation expense	<u>\$ 14,799</u>	<u>\$ 14,896</u>	<u>\$ 1,260</u>	<u>\$ 30,955</u>

Note 5. Long-Term Obligations

Long-term obligations consist of the following (in thousands):

	December 31,	
	2011	2010
Senior secured debt financing facility:		
Term loans payable	\$ 240,625	\$ 590,099
Revolving credit facility	660,730	—
Notes payable through October 2018 at a weighted average interest rate of 2.0% and 2.4% at December 31, 2011 and 2010, respectively	38,338	6,869
Other long-term debt at a weighted average interest rate of 3.2% and 6.6% at December 31, 2011 and 2010, respectively	16,383	3,986
	956,076	600,954
Less current maturities	(29,524)	(52,888)
	<u>\$ 926,552</u>	<u>\$ 548,066</u>

The scheduled maturities of long-term obligations outstanding at December 31, 2011 are as follows (in thousands):

2012	\$ 29,524
2013	51,013
2014	27,105
2015	35,514
2016	811,841
Thereafter	1,079
	<u>\$ 956,076</u>

We obtained a senior secured debt financing facility from Lehman Brothers Inc. and Deutsche Bank Securities, Inc. on October 12, 2007 (as amended, the "2007 Credit Agreement"). The 2007 Credit Agreement was scheduled to mature on October 12, 2013 and included a \$610 million term loan, a \$40 million Canadian currency term loan, a \$85 million U.S. dollar revolving credit facility, and a \$15 million dual currency revolving facility for drawings of either U.S. dollars or Canadian dollars. The 2007 Credit Agreement also provided for (i) the issuance

of letters of credit of up to \$35 million in U.S. dollars and up to \$10 million in either U.S. or Canadian dollars, and (ii) the opportunity for us to add additional term loan facilities and/or increase the \$100 million revolving credit facility's commitments, subject to certain requirements.

On March 25, 2011, we entered into a credit agreement (the "Original 2011 Credit Agreement") with the several lenders from time to time party thereto, JPMorgan Chase Bank, N.A., as administrative agent, Bank of America N.A., as syndication agent, RBS Citizens, N.A. and Wells Fargo Bank, National Association, as co-documentation agents, and J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, RBS Citizens, N.A. and Wells Fargo Securities, LLC, as joint lead arrangers and joint bookrunners, which was amended on September 30, 2011 (as amended, the "Amended and Restated 2011 Credit Agreement"). The Original 2011 Credit Agreement provided for borrowings up to \$1 billion, consisting of (1) a five-year \$750 million revolving credit facility (the "Revolving Credit Facility"), and (2) a five-year \$250 million term loan facility (the "Term Loan Facility"). Under the Revolving Credit Facility, we were permitted to draw up to the U.S. dollar equivalent of \$300 million in Canadian dollars, pounds sterling, euros, and other agreed-upon currencies. The Original 2011 Credit Agreement also provided for (a) the issuance of up to \$75 million of letters of credit under the Revolving Credit Facility in agreed-upon currencies, (b) the issuance of up to \$25 million of swing line loans under the Revolving Credit Facility, and (c) the opportunity to increase the amount of the Revolving Credit Facility or obtain incremental term loans up to \$400 million. Outstanding letters of credit and swing line loans are taken into account when determining availability under the Revolving Credit Facility. We used the initial proceeds from the Original 2011 Credit Agreement to pay off outstanding amounts of \$591.1 million under the 2007 Credit Agreement.

The Amended and Restated 2011 Credit Agreement retains most of the terms of the Original 2011 Credit Agreement while also modifying certain terms to (1) provide an additional term loan facility of up to \$200 million ("New Term Loan Facility"); (2) increase the total availability under the Revolving Credit Facility by \$200 million to \$950 million (the increase was applied to the multicurrency component of the Revolving Credit Facility, thus increasing the foreign currency availability to \$500 million from \$300 million); (3) increase the amount of letters of credit that may be issued under the Revolving Credit Facility to \$125 million from \$75 million; (4) add certain subsidiaries as additional borrowers under the Revolving Credit Facility; and (5) make other immaterial or clarifying modifications and amendments to the terms of the Original 2011 Credit Agreement. The Amended and Restated 2011 Credit Agreement maintains our opportunity to increase the amount of the Revolving Credit Facility or obtain incremental term loans up to \$400 million. We used the initial proceeds from a draw under the increased Revolving Credit Facility for the acquisition of ECP in October 2011, as discussed in more detail in Note 9, "Business Combinations." As of December 31, 2011, we had not drawn any amounts under the New Term Loan Facility, but in January 2012, we borrowed the full \$200 million available under the New Term Loan Facility, which we used to pay down a portion of our Revolving Credit Facility borrowings.

The obligations under the Amended and Restated 2011 Credit Agreement are unconditionally guaranteed by our direct and indirect domestic subsidiaries and certain foreign subsidiaries. Obligations under the Amended and Restated 2011 Credit Agreement, including the related guarantees, are collateralized by a security interest and lien on a majority of the existing and future personal property of, and a security interest in 100% of our equity interest in, each of our existing and future direct and indirect domestic and foreign subsidiaries, provided that if a pledge of 100% of a foreign subsidiary's voting equity interests gives rise to an adverse tax consequence, such pledge shall be limited to 65% of the voting equity interest of the first tier foreign subsidiary. In the event that we obtain and maintain certain ratings from S&P (BBB- or better, with stable or better outlook) or Moody's (Baa3 or better, with stable or better outlook), and upon our request, the security interests in and liens on the collateral described above shall be released. In October 2011, Moody's and S&P affirmed our credit ratings at Ba2 and BB+, respectively, with a stable outlook.

Amounts under the Revolving Credit Facility will be due and payable upon maturity of the Amended and Restated 2011 Credit Agreement in March 2016. Amounts under the Term Loan Facility are due and payable in

quarterly installments, with the annual payments equal to 5% of the original principal amount in the first and second years, 10% of the original principal amount in the third and fourth years, and 15% of the original principal amount in the fifth year. The remaining balance under the Term Loan Facility will be due and payable on the maturity date of the Amended and Restated 2011 Credit Agreement. Amounts under the New Term Loan Facility will be due and payable in quarterly installments equal to 1.25% of the original principal amount at the end of each of the eight quarters subsequent to the first quarter of 2012, 2.5% at the end of each of the following eight quarters, and 3.75% each quarter thereafter. The remaining balance under the New Term Loan Facility will be due and payable on the maturity date of the Amended and Restated 2011 Credit Agreement. We are required to prepay the Term Loan Facility and the New Term Loan Facility by amounts equal to proceeds from the sale or disposition of certain assets if the proceeds are not reinvested within twelve months. We also have the option to prepay outstanding amounts under the Amended and Restated 2011 Credit Agreement.

The Amended and Restated 2011 Credit Agreement contains customary representations and warranties, and contains customary covenants that provide limitations and conditions on our ability to, among other things (i) incur indebtedness, (ii) incur liens, (iii) enter into any merger, consolidation, amalgamation, or otherwise liquidate or dissolve the Company, (iv) dispose of certain property, (v) make dividend payments, repurchase our stock, or enter into derivative contracts indexed to the value of our common stock, (vi) make certain investments, including the acquisition of assets constituting a business or the stock of a business designated as a non-guarantor, (vii) make optional prepayments of subordinated debt, (viii) enter into sale-leaseback transactions, (ix) issue preferred stock, redeemable stock, convertible stock or other similar equity instruments, and (x) enter into hedge agreements for speculative purposes or otherwise not in the ordinary course of business. The Amended and Restated 2011 Credit Agreement also contains financial and affirmative covenants under which we (i) may not exceed a maximum net leverage ratio of 3.00 to 1.00, except in connection with permitted acquisitions with aggregate consideration in excess of \$200 million during any period of four consecutive fiscal quarters in which case the maximum net leverage ratio may increase to 3.50 to 1.00 for the subsequent four fiscal quarters and (ii) are required to maintain a minimum interest coverage ratio of 3.00 to 1.00. We were in compliance with all restrictive covenants under the Amended and Restated 2011 Credit Agreement and the 2007 Credit Agreement as of December 31, 2011 and 2010, respectively.

The Amended and Restated 2011 Credit Agreement contains events of default that include (i) our failure to pay principal when due or interest, fees, or other amounts after grace periods, (ii) our material breach of any representation or warranty, (iii) covenant defaults, (iv) cross defaults to certain other indebtedness, (v) bankruptcy, (vi) certain ERISA events, (vii) material judgments, (viii) change of control, and (ix) failure of subordinated indebtedness to be validly and sufficiently subordinated.

Concurrently with the payment of amounts outstanding under the 2007 Credit Agreement, we incurred a loss on debt extinguishment related to the write off of the unamortized balance of capitalized debt issuance costs of \$5.3 million. The amount of the write off excludes debt issuance cost amortization, which is recorded as a component of interest expense. We incurred \$8.2 million in fees related to the execution of the Original 2011 Credit Agreement and an additional \$2.8 million related to the execution of the Amended and Restated 2011 Credit Agreement. These fees were capitalized within Other Assets on our Consolidated Balance Sheet and are amortized over the term of the agreement.

Borrowings under the Amended and Restated 2011 Credit Agreement bear interest at variable rates, which depend on the currency and duration of the borrowing elected, plus an applicable margin. The applicable margin is subject to change in increments of 0.25% depending on our total leverage ratio. Interest payments are due quarterly in arrears for the term loans and on the last day of the selected interest period on revolver borrowings. Including the effect of the interest rate swap agreements described in Note 6, "Derivative Instruments and Hedging Activities," the weighted average interest rate on borrowings outstanding against the Amended and Restated 2011 Credit Agreement at December 31, 2011 was 2.59%. We also pay a commitment fee based on the average daily unused amount of the Revolving Credit Facility. The commitment fee is subject to change in increments of 0.05% depending on our total leverage ratio. In addition, we pay a participation commission on

outstanding letters of credit at an applicable rate based on our total leverage ratio, as well as a fronting fee of 0.125% to the issuing bank, which are due quarterly in arrears. Beginning on December 1, 2011 through January 31, 2012, the date we drew the New Term Loan Facility, we incurred a ticking fee on the unfunded balance of the New Term Loan Facility. The ticking fee is calculated based on variable rates ranging from 0.25% to 0.50%, which are determined based on our total leverage ratio. The ticking fees are payable in arrears on December 31, 2011 and March 31, 2012. Borrowings under the Amended and Restated 2011 Credit Agreement at December 31, 2011 totaled \$901.4 million, of which \$12.5 million was classified as current maturities. As of December 31, 2011, there were \$35.4 million of outstanding letters of credit. The amounts available under the Revolving Credit Facility are reduced by the amounts outstanding under letters of credit, and thus availability on the Revolving Credit Facility at December 31, 2011 was \$253.9 million. After giving effect to the additional \$200 million of availability under the New Term Loan Facility, total availability under the 2011 Amended and Restated Credit Facility was \$453.9 million at December 31, 2011.

Borrowings under the 2007 Credit Agreement accrued interest at variable rates, which depended on the currency and the duration of the borrowing elected, plus an applicable margin. Including the effect of the interest rate swap agreements, the weighted average interest rate on borrowings outstanding under the 2007 Credit Agreement at December 31, 2010 was 3.97%. We also paid commitment fees on the unused portion of our revolving credit facilities, which ranged from 0.38% to 0.50% based on our total leverage ratio. Borrowings under the 2007 Credit Agreement at December 31, 2010 totaled \$590.1 million, of which \$50.0 million was classified as current maturities.

As part of the consideration for business acquisitions completed during 2011, 2010 and 2009, we issued promissory notes totaling approximately \$34.2 million, \$5.5 million and \$1.2 million, respectively. The notes bear interest at annual rates of 2.0% to 4.0%, and interest is payable at maturity or in monthly installments.

Note 6. Derivative Instruments and Hedging Activities

We are exposed to market risks, including the effect of changes in interest rates, foreign currency exchange rates and commodity prices. Under our current policies, we use derivatives to manage our exposure to variable interest rates on our senior secured debt. With our acquisition of ECP in October 2011, we also use certain short-term foreign currency forward contracts to manage our exposure to variability in foreign currency denominated transactions. We do not attempt to hedge our commodity price risks. We do not hold or issue derivatives for trading purposes.

Interest Rate Swaps

At December 31, 2011, we had interest rate swap agreements in place to hedge a portion of the variable interest rate risk on our variable rate borrowings under our credit agreement, with the objective of minimizing the impact of interest rate fluctuations and stabilizing cash flows. Under the terms of the interest rate swap agreements, we pay the fixed interest rate and have received and will receive payment at a variable rate of interest based on the London InterBank Offered Rate ("LIBOR") or the Canadian Dealer Offered Rate ("CDOR") for the respective currency of each interest rate swap agreement's notional amount. The interest rate swap agreements qualify as cash flow hedges, and we have elected to apply hedge accounting for these swap agreements. As a result, the effective portion of changes in the fair value of the interest rate swap agreements is recorded in Accumulated Other Comprehensive Income (Loss) and is reclassified to interest expense when the underlying interest payment has an impact on earnings. The ineffective portion of changes in the fair value of the interest rate swap agreements is reported in interest expense.

The following table summarizes the terms of our interest rate swap agreements as of December 31, 2011:

Notional Amount	Effective Date	Maturity Date	Fixed Interest Rate*
USD \$250,000,000	October 14, 2010	October 14, 2015	3.06%
USD \$100,000,000	April 14, 2011	October 14, 2013	2.61%
USD \$60,000,000	November 30, 2011	October 31, 2016	2.70%
USD \$60,000,000	November 30, 2011	October 31, 2016	2.69%
USD \$50,000,000	December 30, 2011	December 30, 2016	2.69%
GBP £50,000,000	November 30, 2011	October 30, 2016	2.86%
CAD \$25,000,000	December 30, 2011	March 24, 2016	2.92%

* Includes applicable margin of 1.50% per annum on LIBOR or CDOR-based debt in effect as of December 31, 2011 under the Amended and Restated 2011 Credit Agreement.

On March 25, 2011, Deutsche Bank AG, the former counterparty on our \$100 million notional amount interest rate swap, assigned its obligation under the swap contract to Bank of America N.A because Deutsche Bank AG was not a secured lender under the Amended and Restated 2011 Credit Agreement. We believe Bank of America N.A. is creditworthy to perform its obligation as the counterparty to the swap.

As of December 31, 2011, the fair market values of these swap contracts was a liability of \$10.6 million included in Other Noncurrent Liabilities on our Consolidated Balance Sheet. As of December 31, 2010, we held the \$250 million notional amount swap and the \$100 million notional amount swap. The fair market value of these contracts was an asset of \$4.8 million included in Other Assets. At December 31, 2010, we also held a \$200 million notional amount swap that was a liability of \$1.4 million included in Other Accrued Expenses.

The activity related to our interest rate swap agreements is as follows (in thousands):

	Year Ended December 31,		
	2011	2010	2009
Gain (loss) in Other Comprehensive Income (Loss)	\$ (19,391)	\$ 3,230	\$ (7,994)
Loss reclassified to interest expense	(5,641)	(10,377)	(11,595)
Loss from hedge ineffectiveness	(225)	—	—

In connection with the execution of the Original 2011 Credit Agreement on March 25, 2011 as discussed in Note 5, "Long-Term Obligations," we temporarily experienced differences in critical terms between the interest rate swaps and the underlying debt. As a result, we incurred a loss of \$0.2 million related to hedge ineffectiveness in 2011. Beginning on April 14, 2011, we have held, and expect to continue to hold through the maturity of the respective interest rate swap agreements, at least the notional amount of each agreement in the respective variable-rate debt, such that future ineffectiveness will be immaterial and the swaps will continue to be highly effective in hedging our variable rate debt.

As of December 31, 2011, we estimate that \$3.4 million of derivative losses (net of tax) included in Accumulated Other Comprehensive Income (Loss) will be reclassified into interest expense within the next 12 months.

Foreign Currency Forward Contracts

In order to manage the risk of changes in exchange rates associated with certain foreign currency transactions in our European operations, such as our purchases of inventory denominated in a currency other than the pound sterling, we have entered into short-term foreign currency forward contracts. As of December 31, 2011, we had nine contracts outstanding to purchase up to €10.4 million for £8.8 million and two contracts to purchase \$1.5 million for £0.9 million, all of which expire during the first half of 2012. These contracts are

adjusted to fair value each balance sheet date. As we have elected not to apply hedge accounting for these transactions, the changes in fair value are recorded in Other Income, net. The fair value of these contracts at December 31, 2011 and the effect on our results of operations for the year ended December 31, 2011 were immaterial.

Note 7. Fair Value Measurements

We use the market and income approaches to value our financial assets and liabilities, and there were no changes in valuation techniques during the year ended December 31, 2011. The tables below present information about our financial assets and liabilities that are measured at fair value on a recurring basis and indicate the fair value hierarchy of the valuation techniques we utilized to determine such fair value. The tiers in the fair value hierarchy include: Level 1, defined as observable inputs such as quoted market prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions. Our Level 2 assets and liabilities are valued using inputs from third parties and market observable data. We obtain valuation data for the cash surrender value of life insurance and deferred compensation liabilities from third party sources, which determine the net asset values for our accounts using quoted market prices, investment allocations and reportable trades. We value the interest rate swaps using a third party valuation model that performs a discounted cash flow analysis based on the terms of the contracts and market observable inputs such as LIBOR and forward interest rates. We determined the fair value of the contingent consideration obligations using the income approach. The key assumptions used in determining the fair value are the projected results of the acquired business and our assessment of the probabilities surrounding the achievement of targets detailed in the respective agreements, which are used to determine the estimated undiscounted cash payments, and a discount rate that approximates our debt credit rating. The fair value measurement is based upon significant inputs not observable in the market. Changes in the value of the obligation are recorded in Change in Fair Value of Contingent Consideration Liabilities within Other Expense (Income) on our Consolidated Statements of Income.

The following tables present information about our financial assets and liabilities measured at fair value on a recurring basis as of December 31, 2011 and 2010 (in thousands):

	Balance as	Fair Value Measurements as of December 31, 2011		
	of December 31,	Level 1	Level 2	Level 3
	2011			
Assets:				
Cash surrender value of life insurance	\$ 13,413	\$ —	\$ 13,413	\$ —
Total Assets	<u>\$ 13,413</u>	<u>\$ —</u>	<u>\$ 13,413</u>	<u>\$ —</u>
Liabilities:				
Contingent consideration liabilities	\$ 82,382	\$ —	\$ —	\$ 82,382
Deferred compensation liabilities	14,071	—	14,071	—
Interest rate swaps	10,576	—	10,576	—
Total Liabilities	<u>\$ 107,029</u>	<u>\$ —</u>	<u>\$ 24,647</u>	<u>\$ 82,382</u>

	Balance as	Fair Value Measurements as of December 31, 2010		
	of December 31,	Level 1	Level 2	Level 3
	2010			
Assets:				
Cash surrender value of life insurance	\$ 10,517	\$ —	\$ 10,517	\$ —
Interest rate swaps	4,815	—	4,815	—
Total Assets	<u>\$ 15,332</u>	<u>\$ —</u>	<u>\$ 15,332</u>	<u>\$ —</u>
Liabilities:				
Deferred compensation liabilities	\$ 11,245	\$ —	\$ 11,245	\$ —
Contingent consideration liabilities	2,000	—	—	2,000
Interest rate swaps	1,416	—	1,416	—
Total Liabilities	<u>\$ 14,661</u>	<u>\$ —</u>	<u>\$ 12,661</u>	<u>\$ 2,000</u>

The cash surrender value of life insurance and deferred compensation liabilities are included in Other Assets and Other Noncurrent Liabilities, respectively, on our Consolidated Balance Sheets. The contingent consideration liabilities are classified as a separate line item in noncurrent liabilities except for \$0.6 million and \$0.5 million as of December 31, 2011 and 2010, respectively, which are included in Other Accrued Expenses on our Consolidated Balance Sheets as they are expected to be paid in the next 12 month period.

Changes in the fair value of our Level 3 contingent consideration obligations are as follows:

Balance as of January 1, 2010	\$ —
Contingent consideration liabilities recorded for business acquisitions	2,000
Balance as of December 31, 2010	<u>\$ 2,000</u>
Contingent consideration liabilities recorded for business acquisitions	81,239
(Gain) loss included in earnings, net	(1,408)
Exchange rate effects	551
Balance as of December 31, 2011	<u>\$ 82,382</u>

Note 8. Commitments and Contingencies

Operating Leases

We are obligated under noncancelable operating leases for corporate office space, warehouse and distribution facilities, trucks and certain equipment.

The future minimum lease commitments under these leases at December 31, 2011 are as follows (in thousands):

Years ending December 31:	
2012	\$ 84,977
2013	77,306
2014	66,013
2015	56,116
2016	43,179
Thereafter	123,137
Future Minimum Lease Payments	<u>\$ 450,728</u>

Rental expense for operating leases was approximately \$83.7 million, \$66.9 million and \$57.2 million during the years ended December 31, 2011, 2010 and 2009, respectively.

We guarantee the residual values of the majority of our truck and equipment operating leases. The residual values decline over the lease terms to a defined percentage of original cost. In the event the lessor does not realize the residual value when a piece of equipment is sold, we would be responsible for a portion of the shortfall. Similarly, if the lessor realizes more than the residual value when a piece of equipment is sold, we would be paid the amount realized over the residual value. Had we terminated all of our operating leases subject to these guarantees at December 31, 2011, the guaranteed residual value would have totaled approximately \$35.7 million. We have not recorded a liability for the guaranteed residual value of equipment under operating leases as the recovery on disposition of the equipment under the leases is expected to approximate the guaranteed residual value.

Litigation and Related Contingencies

In December 2005 and May 2008, Ford Global Technologies, LLC filed complaints with the International Trade Commission against us and others alleging that certain aftermarket parts imported into the U.S. infringed on Ford design patents. The parties settled these matters in April 2009 pursuant to a settlement arrangement that was scheduled to expire in September 2011. In July 2011, we entered into a new agreement with Ford (which became effective October 1, 2011) to continue our arrangement through March 2015 with substantially the same terms as the 2009 agreement. Pursuant to the settlement, we (and our designees) became the sole distributor in the U.S. of aftermarket automotive parts that correspond to Ford collision parts that are covered by a U.S. design patent. We paid Ford an upfront fee at the commencement of both the 2009 and 2011 agreements for these rights and pay a royalty for each such part we sell. The amortization of the upfront fee and the royalty expenses are reflected in Cost of Goods Sold on the accompanying Consolidated Statements of Income.

We are a plaintiff in a class action lawsuit against several aftermarket product suppliers. In January 2012, we reached a settlement with one of the defendants, and a settlement with the other vendors is subject to court approval. Our recovery is expected to be approximately \$15 million in the aggregate, net of legal fees. We will recognize the gains from these settlements when substantially all uncertainties regarding the timing and the amount of the settlements are resolved.

We also have certain other contingencies resulting from litigation, claims and other commitments and are subject to a variety of environmental and pollution control laws and regulations incident to the ordinary course of business. We currently expect that the resolution of such contingencies will not materially affect our financial position, results of operations or cash flows.

Note 9. Business Combinations

On October 3, 2011, LKQ Corporation, LKQ Euro Limited ("LKQ Euro"), a subsidiary of LKQ Corporation, and Draco Limited ("Draco") entered into an Agreement for the Sale and Purchase of Shares of Euro Car Parts Holdings Limited (the "Sale and Purchase Agreement"). Under the terms of the Sale and Purchase Agreement, effective October 1, 2011, LKQ Euro acquired all of the shares in the capital of ECP, an automotive aftermarket products distributor in the U.K., from Draco and the other shareholders of ECP. With the acquisition of ECP, we have expanded our geographic presence beyond North America into the European market. Our acquisition of ECP established our Wholesale – Europe operating segment. Total acquisition date fair value of the consideration for the ECP acquisition was £261.6 million (\$403.7 million), composed of £190.3 million (\$293.7 million) of cash (net of cash acquired), £18.4 million (\$28.3 million) of notes payable, £2.7 million (\$4.1 million) of other purchase price obligations (non-interest bearing) and a contingent payment to the former owners of ECP. Under the contingent consideration agreement, if certain annual EBITDA targets are met, we may pay between £22 million and £25 million and between £23 million and £30 million for the years ending December 31, 2012 and 2013, respectively. We have assessed the acquisition date fair value of these contingent payments to be £50.2 million (\$77.5 million at the exchange rate on October 3, 2011). For all subsequent reporting periods until the contingency is resolved, we will reassess the fair value of this contingent payment and any changes in fair value will be recognized in our Consolidated Statements of Income. There was not a material change in the assessed fair value of the contingent payment between October 3, 2011 and December 31, 2011.

We recorded goodwill of \$337.0 million for the ECP acquisition, which will not be deductible for income tax purposes. In the period between October 1, 2011 and December 31, 2011, ECP generated approximately \$138.5 million of revenue and \$10.1 million of operating income.

In addition to our acquisition of ECP, we made 20 acquisitions in North America in 2011 (12 wholesale businesses, five recycled heavy-duty truck products businesses and three self service retail operations). Our acquisitions included the purchase of two engine remanufacturers, which expanded our presence in the remanufacturing industry that we entered in 2010. Additionally, our acquisition of an automotive heating and cooling component distributor supplements our expansion into the automotive heating and cooling aftermarket products market. Our North American wholesale business acquisitions also included the purchase of the U.S. vehicle refinish paint distribution business of Akzo Nobel Automotive and Aerospace Coatings (the "Akzo Nobel paint business"), which allowed us to increase our paint and related product offerings and expand our geographic presence in the automotive paint market. Our other 2011 acquisitions enabled us to expand our geographic presence and enter new markets.

Total acquisition date fair value of the consideration for these 20 acquisitions was \$207.3 million, composed of \$193.2 million of cash (net of cash acquired), \$5.9 million of notes payable, \$4.5 million of other purchase price obligations (non-interest bearing) and \$3.7 million of contingent payments to former owners. In conjunction with the acquisition of the Akzo Nobel paint business on May 26, 2011, we entered into a wholesaler agreement under which we became an authorized distributor of Akzo Nobel products in the acquired markets. Included in this agreement is a requirement to make an additional payment to Akzo Nobel in the event that our purchases of Akzo Nobel product do not meet specified thresholds from June 1, 2011 to May 31, 2014. This contingent payment will be calculated as the difference between our actual purchases and the targeted purchase levels outlined in the agreement for the specified period with a maximum payment of \$21.0 million. The contingent consideration liability recorded in 2011 also includes two additional arrangements that have a maximum potential payout of \$4.6 million. The acquisition date fair value of these contingent consideration agreements is immaterial.

During the year ended December 31, 2011, we recorded \$105.2 million of goodwill related to these 20 acquisitions and immaterial adjustments to preliminary purchase price allocations related to certain of our 2010 acquisitions. Of this amount, approximately \$88.3 million is expected to be deductible for income tax purposes. In the period between the acquisition dates and December 31, 2011, these 20 acquisitions generated approximately \$189.8 million of revenue and \$9.1 million of operating income.

In 2010, we made 20 acquisitions in North America (16 wholesale businesses, one recycled heavy-duty truck products business, two self service retail operations and one tire recycling business). Our acquisitions included the purchase of an engine remanufacturer, which allowed us to further vertically integrate our supply chain. We expanded our product offerings through the acquisition of an automotive heating and cooling component business, as well as a tire recycling business. Our 2010 acquisitions have also enabled us to expand our geographic presence, most notably in Canada through our purchase of Cross Canada, an aftermarket product supplier.

Total acquisition date fair value of the consideration for the 2010 acquisitions was \$170.4 million, composed of \$143.6 million of cash (net of cash acquired), \$5.5 million of notes payable, \$4.4 million of other purchase price obligations (non-interest bearing), \$2.0 million of contingent payments to former owners and \$14.9 million in stock issued (689,655 shares). The fair value of the contingent payment was adjusted downward by \$2.0 million in 2011 as a result of changes in the likelihood of meeting the specified performance targets. This adjustment was included in Change in Fair Value of Contingent Consideration Liabilities on our Consolidated Statements of Income for the year ended December 31, 2011. The \$14.9 million of common stock was issued in connection with our acquisition of Cross Canada on November 1, 2010. The fair value of common stock issued was based on the market price of LKQ stock on the date of issuance. We recorded goodwill of \$91.8 million for the 2010 acquisitions, of which \$74.9 million is expected to be deductible for income tax purposes.

On October 1, 2009, we acquired Greenleaf Auto Recyclers, LLC ("Greenleaf") from SSI for \$38.8 million, net of cash acquired. Greenleaf is the entity through which SSI operated its wholesale recycling business. We recorded a gain on bargain purchase for the Greenleaf acquisition totaling \$4.3 million in our results of operations for 2009. We believe that we were able to acquire Greenleaf for less than the fair value of its assets because of (i) our unique position as market leader in the wholesale recycled auto products market and (ii) SSI's intent to exit its Greenleaf operations. Greenleaf generally was an unprofitable venture throughout its history, which included several different ownership groups, and SSI approached us in an effort to sell Greenleaf and exit the wholesale recycled auto products business that no longer fit its strategy. With SSI's intent to exit the wholesale recycled auto products business and our position as the market leader, we were able to agree on a favorable purchase price. We finalized the valuation of acquired inventory, accrued liabilities and deferred taxes in 2010. As a result, we identified certain immaterial adjustments to the opening balance sheet, which were recorded through the results of operations in 2010.

Also in 2009, we acquired four North American wholesale businesses and three recycled heavy-duty truck products businesses. The aggregate acquisition date fair value of the consideration for these seven businesses totaled approximately \$29.5 million in cash, net of cash acquired, and \$1.2 million of debt issued.

The acquisitions are being accounted for under the purchase method of accounting and are included in our consolidated financial statements from the dates of acquisition. The purchase prices were allocated to the net assets acquired based upon estimated fair market values at the dates of acquisition. In connection with the 2011 acquisitions, the purchase price allocations are preliminary as we are in the process of determining the following: 1) valuation amounts for certain of the inventories acquired; 2) valuation amounts for certain intangible assets acquired; 3) the acquisition date fair value of certain liabilities assumed; and 4) the final estimation of the tax basis of the entities acquired.

The purchase price allocations for the acquisitions completed during 2011 and 2010 are as follows (in thousands):

	December 31,			2010 (Final)
	ECP (Preliminary)	2011 Other Acquisitions (Preliminary)	Total (Preliminary)	
Receivables	\$ 54,225	\$ 23,538	\$ 77,763	\$ 27,774
Receivable reserves	(3,832)	(1,121)	(4,953)	(2,186)
Inventory	93,835	59,846	153,681	38,121
Prepaid expenses and other current assets	3,189	2,820	6,009	1,480
Property and equipment	41,830	10,614	52,444	18,517
Goodwill	337,031	105,177	442,208	91,757
Other intangibles	39,583	7,683	47,266	6,163
Other assets	13	9,420	9,433	1,529
Deferred income taxes	(13,218)	7,235	(5,983)	2,922
Current liabilities assumed	(135,390)	(17,257)	(152,647)	(15,665)
Debt assumed	(13,564)	—	(13,564)	—
Other noncurrent liabilities assumed	—	(619)	(619)	—
Contingent consideration liabilities	(77,539)	(3,700)	(81,239)	(2,000)
Other purchase price obligations	(4,136)	(4,510)	(8,646)	(4,359)
Notes issued	(28,302)	(5,917)	(34,219)	(5,530)
Stock issued	—	—	—	(14,945)
Cash used in acquisitions, net of cash acquired	<u>\$ 293,725</u>	<u>\$ 193,209</u>	<u>\$ 486,934</u>	<u>\$ 143,578</u>

The primary reason for our acquisitions made in 2011, 2010 and 2009 was to leverage our strategy of becoming a one-stop provider for alternative vehicle replacement products. These acquisitions enabled us to expand our market presence, expand our product offerings and enter new markets. These factors contributed to purchase prices that included, in many cases, a significant amount of goodwill.

Most notably, our acquisition of ECP in 2011 marks our entry into the European automotive aftermarket business, which provides an opportunity to us as that market has historically had a low penetration of alternative collision parts. Additionally, ECP is a leading distributor of alternative automotive products reaching most major markets in the U.K., with a developed distribution network, experienced management team, and established workforce. These factors contributed to the \$337 million of goodwill recognized related to this acquisition.

The following pro forma summary presents the effect of the businesses acquired during the years ended December 31, 2011 and 2010 as though the businesses had been acquired as of January 1, 2010, and is based upon unaudited financial information of the acquired entities (in thousands, except per share data):

	Year ended December 31,	
	2011	2010
Revenue as reported	\$ 3,269,862	\$ 2,469,881
Revenue of purchased businesses for the period prior to acquisition:		
ECP	407,042	420,769
Other acquisitions	127,275	504,044
Pro forma revenue	<u>\$ 3,804,179</u>	<u>\$ 3,394,694</u>
Income from continuing operations, as reported	\$ 210,264	\$ 167,118
Net income of purchased businesses for the period prior to acquisition, including pro forma purchase accounting adjustments:		
ECP	22,266	9,669
Other acquisitions	6,578	12,996
Pro forma income from continuing operations	<u>\$ 239,108</u>	<u>\$ 189,783</u>
Basic earnings per share from continuing operations, as reported	\$ 1.44	\$ 1.17
Effect of purchased businesses for the period prior to acquisition:		
ECP	0.15	0.07
Other acquisitions	0.05	0.09
Pro forma basic earnings per share from continuing operations(a)	<u>\$ 1.64</u>	<u>\$ 1.32</u>
Diluted earnings per share from continuing operations, as reported	\$ 1.42	\$ 1.15
Effect of purchased businesses for the period prior to acquisition:		
ECP	0.15	0.07
Other acquisitions	0.04	0.09
Pro forma diluted earnings per share from continuing operations(a)	<u>\$ 1.61</u>	<u>\$ 1.30</u>

(a) The sum of the individual earnings per share amounts may not equal the total due to rounding.

Unaudited pro forma supplemental information is based upon accounting estimates and judgments that we believe are reasonable. The unaudited pro forma supplemental information includes the effect of purchase accounting adjustments, such as the adjustment of inventory acquired to net realizable value, adjustments to depreciation on acquired property and equipment, adjustments to amortization on acquired intangible assets, adjustments to interest expense, and the related tax effects. These pro forma results are not necessarily indicative either of what would have occurred if the acquisitions had been in effect for the period presented or of future results.

Note 10. Restructuring and Acquisition Related Expenses***Akzo Nobel Paint Business Integration***

With our acquisition of the Akzo Nobel paint business in the second quarter of 2011, we initiated certain restructuring activities to integrate the acquired paint distribution locations into our existing business. Our restructuring plan included the closure of duplicate facilities, elimination of overlapping delivery routes and termination of employees in connection with the consolidation of the overlapping facilities and delivery routes. During the year ended December 31, 2011, we incurred \$2.6 million of charges primarily related to excess facility costs, which were expensed at the cease-use date for the facilities. While we have substantially completed the integration activities related to the Akzo Nobel paint business acquisition as of December 31, 2011, we may record adjustments to the related excess facility reserves if we determine revisions are required to the underlying assumptions.

Cross Canada Integration

We undertook certain restructuring activities in connection with our acquisition of Cross Canada in the fourth quarter of 2010. The restructuring plan included the integration of our existing Canadian aftermarket operations into the Cross Canada business, as well as the transition of certain corporate functions to our corporate headquarters and our field support center in Nashville. Based on our analysis of the overlapping facilities, we identified aftermarket warehouses and corporate locations that were closed in order to eliminate duplicate facilities. Related to the facilities that will be closed, we terminated certain personnel including drivers, other facility personnel and corporate employees. During the year ended December 31, 2011, we incurred \$1.4 million related to these integration efforts, including \$1.2 million for facility closure and moving costs and \$0.2 million for severance and benefits for terminated employees. The restructuring activities related to the Cross Canada acquisition were substantially completed in 2011.

Greenleaf Integration

In 2009, we commenced restructuring and integration efforts in connection with our acquisition of Greenleaf on October 1, 2009. The restructuring plan included the integration of the acquired Greenleaf operations into our existing salvage business, which resulted in the combination or closure of duplicate facilities and delivery routes. Restructuring and integration expenses associated with the Greenleaf acquisition totaled approximately \$0.7 million and \$0.6 million for the years ended December 31, 2010 and 2009, respectively. These charges reflected costs related to the closure of facilities and severance and related benefits for terminated personnel. The restructuring activities related to the Greenleaf acquisition were substantially completed in 2010.

Keystone Integration

In 2009, we incurred restructuring and integration expenses associated with our acquisition of Keystone Automotive Industries, Inc. ("Keystone"). The restructuring plan included the integration of our existing aftermarket operations into the Keystone business. For the year ended December 31, 2009, related restructuring charges of \$1.9 million included \$0.5 million to move inventory between facilities and migrate the systems utilized by the LKQ facilities to the Keystone system, \$0.5 million of severance and related benefit costs and \$0.9 million of excess facility costs. Our Keystone restructuring plan was completed in 2009.

Other Restructuring Expenses

In 2011, we incurred approximately \$0.4 million of restructuring expenses resulting from the integration of our other 2010 and 2011 acquisitions into our existing business. The restructuring expenses included primarily excess facility costs, which were expensed at the cease-use date for the facilities, and moving expenses for the closure of duplicate facilities. We expect approximately \$0.3 million of additional charges, primarily for moving costs and excess facility reserves, as we complete our integration plans in 2012.

Acquisition Related Expenses

Acquisition related expenses consist of external costs directly related to our acquisitions, such as closing costs and advisory, legal, accounting, valuation and other professional fees. These costs are expensed as incurred. During the year ended December 31, 2011, we incurred \$3.2 million of acquisition related expenses, primarily related to our acquisition of ECP that was effective as of October 1, 2011.

Note 11. Retirement Plans

401(k) Plan

We sponsor a 401(k) defined contribution plan that covers substantially all of our eligible, full time U.S. employees. Contributions to the plan are made by both the employee and us. Our contributions are based on the level of employee contributions and are subject to certain vesting provisions based upon years of service. Expenses related to this plan totaled approximately \$5.3 million, \$4.8 million and \$3.7 million during 2011, 2010 and 2009, respectively.

Nonqualified Deferred Compensation Plan

We also offer a nonqualified deferred compensation plan to eligible employees who, due to Internal Revenue Service ("IRS") guidelines, may not take full advantage of our 401(k) defined contribution plan. The plan allows participants to defer eligible compensation, subject to certain limitations. We will match 50% of the portion of the employee's contributions that does not exceed 6% of the employee's eligible deferrals. The deferred compensation, together with our matching contributions and accumulated earnings, is accrued and is payable after retirement or termination of employment, subject to vesting provisions. Participants may also elect to receive amounts deferred in a given year on any plan anniversary five or more years subsequent to the year of deferral. Our matching contributions vest over a four year period and totaled \$0.8 million, \$0.7 million and \$0.5 million in 2011, 2010 and 2009, respectively, net of allowable transfers into our 401(k) defined contribution plan. Total deferred compensation liabilities were approximately \$14.1 million and \$11.2 million at December 31, 2011 and 2010, respectively.

The nonqualified deferred compensation plan is funded under a trust agreement whereby we pay to the trust amounts deferred by employees, together with our match, with such amounts invested in life insurance policies carried to meet the obligations under the deferred compensation plan. As of December 31, 2011 and 2010, we held 184 and 166 contracts with a face value of \$80.6 million and \$72.7 million, respectively. The cash surrender value of these policies was approximately \$13.4 million and \$10.5 million at December 31, 2011 and 2010, respectively.

Note 12. Earnings per Share

Basic earnings per share are computed using the weighted average number of common shares outstanding during the period. Diluted earnings per share incorporate the incremental shares issuable upon the assumed exercise of stock options and the assumed vesting of RSUs and restricted stock. Certain of our stock options and restricted stock were excluded from the calculation of diluted earnings per share because they were antidilutive, but these equity instruments could be dilutive in the future.

The following table sets forth the computation of earnings per share (in thousands, except per share amounts):

	Year Ended December 31,		
	2011	2010	2009
Income from continuing operations	\$ 210,264	\$ 167,118	\$ 127,137
Denominator for basic earnings per share—Weighted-average shares outstanding	146,126	143,271	140,541
Effect of dilutive securities:			
Stock options	2,125	2,559	3,438
RSUs	91	—	—
Restricted stock	33	27	11
Denominator for diluted earnings per share—Adjusted weighted-average shares outstanding	148,375	145,857	143,990
Basic earnings per share from continuing operations	\$ 1.44	\$ 1.17	\$ 0.90
Diluted earnings per share from continuing operations	\$ 1.42	\$ 1.15	\$ 0.88

The following chart sets forth the number of employee stock-based compensation awards outstanding but not included in the computation of diluted earnings per share because their effect would have been antidilutive (in thousands):

	Year Ended December 31,		
	2011	2010	2009
Antidilutive securities:			
Stock options	1,170	2,857	1,398
Restricted stock	—	40	—

Note 13. Income Taxes

The provision for income taxes consists of the following components (in thousands):

	Year Ended December 31,		
	2011	2010	2009
Current:			
Federal	\$ 97,887	\$ 75,009	\$ 58,854
State	14,435	16,552	12,619
Foreign	3,883	2,483	825
	116,205	94,044	72,298
Deferred	9,302	8,963	5,882
Provision for income taxes	\$ 125,507	\$ 103,007	\$ 78,180

Income taxes have been based on the following components of income from continuing operations before provision for income taxes (in thousands):

	Year Ended December 31,		
	2011	2010	2009
Domestic	\$ 319,305	\$ 264,438	\$ 202,558
Foreign	16,466	5,687	2,759
	\$ 335,771	\$ 270,125	\$ 205,317

The U.S. federal statutory rate is reconciled to the effective tax rate as follows:

	Year Ended December 31,		
	2011	2010	2009
U.S. federal statutory rate	35.0%	35.0%	35.0%
State income taxes, net of state credits and federal tax impact	3.1	3.4	4.1
Non-deductible expenses	0.7	0.3	0.5
Impact of international operations	(0.8)	(0.3)	(0.2)
Federal production incentives and credits	(0.4)	(0.2)	(0.4)
Revaluation of deferred taxes	—	(0.5)	—
Non-taxable gain on bargain purchase	—	—	(0.8)
Other, net	(0.2)	0.4	(0.1)
Effective tax rate	<u>37.4%</u>	<u>38.1%</u>	<u>38.1%</u>

We do not provide for U.S. federal income taxes on the undistributed earnings of our foreign subsidiaries because such earnings are reinvested and it is our intention that the earnings will be reinvested indefinitely.

We had no individually significant discrete items included in our 2011 effective tax rate. The 2010 effective tax rate included a \$1.5 million adjustment related to the revaluation of deferred taxes in connection with a legal entity reorganization in the first quarter. The 2009 effective tax rate included a benefit related to the recognition of a \$4.3 million non-taxable gain on a bargain purchase for our acquisition of Greenleaf in October 2009.

The significant components of our deferred tax assets and liabilities are as follows (in thousands):

	December 31,	
	2011	2010
Deferred Tax Assets:		
Inventory	\$ 22,267	\$ 16,409
Accrued expenses and reserves	18,357	17,379
Accounts receivable	10,860	9,330
Stock based compensation	8,945	6,609
Qualified and nonqualified retirement plans	5,157	4,422
Net operating loss carryforwards	4,722	4,681
Interest rate swaps	3,679	—
Long term incentive plan	3,260	1,889
Unrecognized tax benefits	1,669	1,657
Other	3,692	2,015
	82,608	64,391
Less valuation allowance	(1,911)	(2,607)
Total deferred tax assets	<u>\$ 80,697</u>	<u>\$ 61,784</u>
Deferred Tax Liabilities:		
Goodwill and other intangible assets	\$ 46,373	\$ 38,648
Property and equipment	44,535	29,049
Trade name	32,592	23,695
Other	1,864	3,945
Total deferred tax liabilities	<u>\$ 125,364</u>	<u>\$ 95,337</u>
Net deferred tax liability	<u>\$ (44,667)</u>	<u>\$ (33,553)</u>

Deferred tax assets and liabilities are reflected on our Consolidated Balance Sheets as follows (in thousands):

	December 31,	
	2011	2010
Current deferred tax assets	\$ 45,690	\$ 32,506
Current deferred tax liabilities	1,561	
Noncurrent deferred tax liabilities	88,796	66,059

Our current deferred tax liabilities of \$1.6 million were included in Other Current Liabilities on our Consolidated Balance Sheet as of December 31, 2011.

We had net operating loss carryforwards for federal and certain of our state tax jurisdictions, the tax benefits of which total approximately \$4.7 million at December 31, 2011 and 2010, respectively. At December 31, 2011 and 2010, we also had tax credit carryforwards of \$1.0 million and \$1.4 million, respectively, related to certain of our state tax jurisdictions. As of December 31, 2011 and 2010, a valuation allowance of \$1.9 million and \$2.6 million, respectively, was recognized for a portion of the deferred tax assets related to net operating loss and tax credit carryforwards. The valuation allowance for net operating loss and tax credit carryforwards decreased by \$0.7 million due to current utilization of some of the underlying tax benefits as well as a change in judgment regarding the realization of the remaining carryforwards. The net operating loss carryforwards expire over the period from 2012 through 2030, while nearly all of the tax credit carryforwards have no expiration. Realization of these deferred tax assets is dependent on the generation of sufficient taxable income prior to the expiration dates. Based on historical and projected operating results, we believe that it is more likely than not that earnings will be sufficient to realize the deferred tax assets for which valuation allowances have not been provided. While we expect to realize the deferred tax assets, net of valuation allowances, changes in estimates of future taxable income or in tax laws may alter this expectation.

A reconciliation of the beginning and ending amount of gross unrecognized tax benefits is as follows (in thousands):

	2011	2010	2009
Balance at January 1	\$ 5,441	\$ 8,526	\$ 7,949
Additions based on tax positions related to the current year	952	713	1,811
Additions for tax positions of prior years	192	281	483
Reductions for tax positions of prior years	—	(86)	(90)
Reductions for tax positions of prior years—timing differences	—	(2,041)	—
Lapse of statutes of limitations	(892)	(1,952)	(1,489)
Settlements with taxing authorities	(196)	—	(138)
Balance at December 31	\$ 5,497	\$ 5,441	\$ 8,526

At December 31, 2011 and 2010, we have accumulated interest and penalties included in gross unrecognized tax benefits of \$1.2 million and \$1.1 million, respectively. Of these amounts, \$0.2 million was recorded through the income tax provision during each of the years ended December 31, 2011 and 2010, prior to any reversals for lapses in the statutes of limitations. We had a deferred tax asset of \$0.2 million and \$0.3 million related to the accumulated interest balance as of December 31, 2011 and 2010, respectively. The amount of the unrecognized tax benefits, which if resolved favorably (in whole or in part) would reduce our effective tax rate, is approximately \$3.8 million at both December 31, 2011 and 2010. The balance of unrecognized tax benefits at December 31, 2011 and 2010 also includes \$1.7 million and \$1.6 million, respectively, of tax benefits that, if recognized, would result in adjustments to deferred taxes.

During the twelve months beginning January 1, 2012, it is reasonably possible that we will reduce gross unrecognized tax benefits by up to approximately \$0.6 million, of which approximately \$0.4 million would impact our effective tax rate, primarily as a result of the expiration of certain statutes of limitations.

Tax years after 2007 remain subject to examination by the IRS. In the U.K., tax years through 2009 are no longer open to inquiry. We are currently the subject of income tax audits by various states for prior tax years, as well as an audit of the 2009 tax year by the IRS. Adjustments from such audits, if any, are not expected to have a material effect on our consolidated financial statements.

Note 14. Accumulated Other Comprehensive Income (Loss)

The components of accumulated other comprehensive income (loss) are as follows (in thousands):

	Foreign Currency Translation	Unrealized Gain (Loss) on Pension Plan	Unrealized (Loss) Gain on Interest Rate Swaps	Accumulated Other Comprehensive Income (Loss)
Balance at January 1, 2009	\$ (5,067)	\$ 144	\$ (8,841)	\$ (13,764)
Pretax income (loss)	4,191	(211)	(7,994)	(4,014)
Income tax benefit	—	82	2,878	2,960
Reversal of unrealized loss	—	—	11,595	11,595
Reversal of deferred income taxes	—	—	(4,174)	(4,174)
Balance at December 31, 2009	(876)	15	(6,536)	(7,397)
Pretax income	3,078	—	3,230	6,308
Income tax expense	—	—	(1,054)	(1,054)
Reversal of unrealized (gain) loss	—	(15)	10,377	10,362
Reversal of deferred income taxes	—	—	(3,841)	(3,841)
Balance at December 31, 2010	2,202	—	2,176	4,378
Pretax loss	(4,273)	—	(19,391)	(23,664)
Income tax benefit	—	—	6,847	6,847
Reversal of unrealized loss	—	—	5,641	5,641
Reversal of deferred income taxes	—	—	(2,019)	(2,019)
Hedge ineffectiveness	—	—	(225)	(225)
Income tax benefit	—	—	81	81
Balance at December 31, 2011	<u>\$ (2,071)</u>	<u>\$ —</u>	<u>\$ (6,890)</u>	<u>\$ (8,961)</u>

Note 15. Long Term Incentive Plan

On January 26, 2006, our Board of Directors approved, and our stockholders approved at the annual meeting on May 8, 2006, the LKQ Corporation Long Term Incentive Plan. At our annual meeting on May 2, 2011, the stockholders reapproved this plan. The purpose of the Long Term Incentive Plan is to offer certain key employees the opportunity to receive long-term performance rewards. Performance periods begin on January 1 and end on December 31 of the third calendar year thereafter. Performance awards are equal to the participant's base salary (at the end of the applicable performance period) multiplied by an "Award Percentage." A participant's Award Percentage is determined by three components: the growth over the performance period of each of the Company's earnings per share; total revenue; and return on equity. The Compensation Committee of our Board of Directors determines for each participant the range of Award Percentages based on different growth scenarios of the components. One half of any performance award achieved is payable promptly after the end of the performance period. A participant must be an employee of the Company at the end of the performance period to be eligible for this first payment. The other half of the performance award is deferred and vests in three equal installments on each one year anniversary of the end of the performance period. A participant must be an employee (or in some cases a consultant for us) on each such anniversary date to be eligible for the respective

deferred payment, unless the participant is not an employee as a result of death, total disability or normal retirement at age 65, in which case the participant (or his or her estate) will be entitled to all of the deferred payments upon such death, disability or retirement. Interest on the deferred portion of the performance award accrues at the prime rate and is payable to the participant at the same time as the deferred installments are paid. We have recorded expense related to this plan totaling approximately \$3.7 million, \$3.5 million and \$3.4 million during the years ended December 31, 2011, 2010 and 2009, respectively.

Note 16. Segment and Geographic Information

We have four operating segments: Wholesale—North America; Wholesale—Europe; Self Service; and Heavy-Duty Truck. Our operations in North America, which include our Wholesale—North America, Self Service and Heavy-Duty Truck operating segments, are aggregated into one reportable segment because they possess similar economic characteristics and have common products and services, customers, and methods of distribution. Our Wholesale—Europe operating segment, formed with our acquisition of ECP effective October 1, 2011, marks our entry into the European automotive aftermarket business, and is presented as a separate reportable segment. Although the Wholesale—Europe operating segment shares many of the characteristics of our North American operations, including types of products offered, distribution methods, and procurement, we have provided separate financial information as we believe this data would be beneficial to users in understanding our results. Therefore, we present our reportable segments on a geographic basis.

The following table presents our financial performance, including revenue, earnings before interest, taxes, depreciation and amortization (“EBITDA”) from continuing operations, and depreciation and amortization from continuing operations by reportable segment for the periods indicated (in thousands):

	Year Ended December 31,		
	2011	2010	2009
Revenue			
North America	\$ 3,131,376	\$ 2,469,881	\$ 2,047,942
Europe	138,486	—	—
Total revenue	\$ 3,269,862	\$ 2,469,881	\$ 2,047,942
EBITDA			
North America	\$ 405,924	\$ 339,869	\$ 273,666
Europe	12,144	—	—
Total EBITDA	\$ 418,068	\$ 339,869	\$ 273,666
Depreciation and Amortization			
North America	\$ 52,481	\$ 41,428	\$ 37,450
Europe	2,024	—	—
Total depreciation and amortization	\$ 54,505	\$ 41,428	\$ 37,450

The table below provides a reconciliation from EBITDA to Income from Continuing Operations (in thousands):

	Year Ended December 31,		
	2011	2010	2009
EBITDA	\$ 418,068	\$ 339,869	\$ 273,666
Depreciation and amortization	54,505	41,428	37,450
Interest expense, net	22,447	28,316	30,899
Loss on debt extinguishment	5,345	—	—
Provision for income taxes	125,507	103,007	78,180
Income from continuing operations	\$ 210,264	\$ 167,118	\$ 127,137

The key measure of segment profit or loss reviewed by our chief operating decision maker, who is our Chief Executive Officer, is EBITDA. Segment EBITDA includes revenue and expenses that are controllable by the segment. Corporate and administrative expenses are allocated to the segments based on usage. Since the European segment was initiated in the fourth quarter of 2011, its usage of the shared corporate and administrative costs has been minimal. Segment EBITDA excludes depreciation, amortization, interest (including loss on debt extinguishment) and taxes. Loss on debt extinguishment is considered a component of interest in calculating EBITDA, as the write-off of debt issuance costs is similar to the treatment of debt issuance cost amortization.

The following table presents capital expenditures, which represents additions to property and equipment, by reportable segment (in thousands):

Capital Expenditures	Year Ended December 31,		
	2011	2010	2009
North America	\$ 84,856	\$ 61,438	\$ 55,870
Europe	1,560	—	—
	<u>\$ 86,416</u>	<u>\$ 61,438</u>	<u>\$ 55,870</u>

The following table presents assets by reportable segment (in thousands):

	December 31,		
	2011	2010	2009
Receivables, net			
North America	\$ 230,871	\$ 191,085	\$ 152,443
Europe	50,893	—	—
Total receivables, net	<u>281,764</u>	<u>191,085</u>	<u>152,443</u>
Inventory			
North America	636,145	492,688	385,686
Europe	100,701	—	—
Total inventory	<u>736,846</u>	<u>492,688</u>	<u>385,686</u>
Property and Equipment, net			
North America	380,282	331,312	289,902
Europe	43,816	—	—
Total property and equipment, net	<u>424,098</u>	<u>331,312</u>	<u>289,902</u>
Other unallocated assets	1,756,996	1,284,424	1,192,090
Total assets	<u>\$ 3,199,704</u>	<u>\$ 2,299,509</u>	<u>\$ 2,020,121</u>

We report net trade receivables, inventories, and net property and equipment by segment as that information is used by the chief operating decision maker in assessing segment performance. These assets provide a measure for the operating capital employed in each segment. Unallocated assets include cash, prepaid and other current and noncurrent assets, goodwill, intangibles and income taxes.

Our operations are primarily conducted in the U.S. Our European operations, which we started with the acquisition of ECP in the fourth quarter of 2011, are located in the U.K. We have recycled and aftermarket product operations in Canada, which were expanded in 2010 through the acquisition of Cross Canada, an aftermarket product supplier. We also have operations in Mexico, Guatemala and Costa Rica. Our locations in Mexico include an engine remanufacturer and a bumper refurbishing operation.

The following table sets forth our revenue by geographic area (in thousands):

Revenue	Year Ended December 31,		
	2011	2010	2009
United States	\$ 2,952,620	\$ 2,366,224	\$ 1,971,654
United Kingdom	138,486		
Other countries	178,756	103,657	76,288
	<u>\$ 3,269,862</u>	<u>\$ 2,469,881</u>	<u>\$ 2,047,942</u>

The following table sets forth our tangible long-lived assets, including primarily property and equipment, by geographic area (in thousands):

Long-lived Assets	December 31,	
	2011	2010
United States	\$ 360,961	\$ 316,002
United Kingdom	43,816	—
Other countries	19,321	15,310
	<u>\$ 424,098</u>	<u>\$ 331,312</u>

The following table sets forth our revenue by product category (in thousands):

	Year Ended December 31,		
	2011	2010	2009
Aftermarket, other new and refurbished products	\$ 1,634,003	\$ 1,236,806	\$ 1,093,157
Recycled, remanufactured and related products and services	1,115,088	888,320	749,012
Other	520,771	344,755	205,773
	<u>\$ 3,269,862</u>	<u>\$ 2,469,881</u>	<u>\$ 2,047,942</u>

All of the product categories reflect revenue from our North American reportable segment, while our European segment, which is composed of ECP, an automotive aftermarket products distributor, only generates revenue from the sale of aftermarket products. Revenue from other sources includes scrap sales, bulk sales to mechanical remanufacturers (including cores) and sales of aluminum ingots and sows from our furnace operations.

Note 17. Selected Quarterly Data (unaudited)

The following table represents unaudited selected quarterly financial data for the two years ended December 31, 2011. The operating results for any quarter are not necessarily indicative of the results for any future period.

2010	Quarter Ended			
	Mar. 31	Jun. 30	Sep. 30	Dec. 31
	(In thousands, except per share data)			
Revenue	\$ 603,516	\$ 584,681	\$ 607,621	\$ 674,063
Gross margin	283,290	261,266	261,424	287,500
Operating income	89,929	69,609	65,207	73,132
Income from continuing operations	51,983	37,906	35,901	41,328
Income from discontinued operations	1,953	—	—	—
Net income	53,936	37,906	35,901	41,328
Basic earnings per share from continuing operations(1)	0.37	0.27	0.25	0.29
Diluted earnings per share from continuing operations(1)	0.36	0.26	0.25	0.28

	Quarter Ended			
	Mar. 31	Jun. 30	Sep. 30	Dec. 31(2)
	(In thousands, except per share data)			
2011				
Revenue	\$ 786,648	\$ 759,684	\$ 783,898	\$ 939,632
Gross margin	343,646	322,236	334,322	391,789
Operating income	107,371	78,486	85,488	90,138
Income from continuing operations	58,182	46,706	49,231	56,145
Income from discontinued operations	—	—	—	—
Net income	58,182	46,706	49,231	56,145
Basic earnings per share from continuing operations(1)	0.40	0.32	0.34	0.38
Diluted earnings per share from continuing operations(1)	0.39	0.32	0.33	0.38

(1) The sum of the quarters may not equal the total of the respective year's earnings per share on either a basic or diluted basis due to changes in weighted average shares outstanding throughout the year.

(2) Results for the quarter ended December 31, 2011 include the results of ECP from the acquisition effective as of October 1, 2011 through the end of the quarter.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

As of December 31, 2011, the end of the period covered by this report, an evaluation was carried out under the supervision and with the participation of LKQ Corporation's management, including our Chief Executive Officer and our Chief Financial Officer, of our "disclosure controls and procedures" (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934). Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that the design and operation of these disclosure controls and procedures were effective to ensure that the Company is able to collect, process and disclose, within the required time periods, the information we are required to disclose in the reports we file with the Securities and Exchange Commission.

Report of Management on Internal Control over Financial Reporting dated February 27, 2012

Management of LKQ Corporation and subsidiaries (the "Company") is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. The Company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States. Internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company, and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on the Company's financial statements.

We have excluded from our assessment the internal control over financial reporting at Euro Car Parts Holdings Limited ("ECP"), which was acquired effective October 1, 2011, and whose financial statements constitute 13% and 19% of net and total assets, respectively, 4% of revenue, and 3% of income from continuing operations of the consolidated financial statement amounts as of and for the year ended December 31, 2011.

Internal control over financial reporting includes the controls themselves, monitoring and internal auditing practices, and actions taken to correct deficiencies as identified. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2011. Management based this assessment on criteria for effective internal control over financial reporting described in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Management's assessment included an evaluation of the design of the Company's internal control over financial reporting and testing of the operational effectiveness of its internal control over financial reporting. Management reviewed the results of its assessment with the Audit Committee of the Company's Board of Directors.

Based on this assessment, management determined that, as of December 31, 2011, the Company maintained effective internal control over financial reporting. Deloitte & Touche LLP, independent registered public

accounting firm, who audited and reported on the consolidated financial statements of the Company included in this report, has issued an attestation report on the effectiveness of our internal control over financial reporting as of December 31, 2011.

Changes in Internal Control over Financial Reporting

Other than the change in internal control resulting from the acquisition of ECP effective October 1, 2011, there was no change in the Company's internal control over financial reporting that occurred during the Company's most recently completed fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of LKQ Corporation:

We have audited the internal control over financial reporting of LKQ Corporation and subsidiaries (the "Company") as of December 31, 2011, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. As described in *Report of Management on Internal Control over Financial Reporting dated February 27, 2012*, management excluded from its assessment the internal control over financial reporting at Euro Car Parts Holdings, Limited ("ECP"), which was acquired effective October 1, 2011, and whose financial statements constitute 13% and 19% of net and total assets, respectively, 4% of revenue, and 3% of income from continuing operations of the consolidated financial statement amounts as of and for the year ended December 31, 2011. Accordingly, our audit did not include the internal control over financial reporting at ECP. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Report of Management on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2011, based on the criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements and financial statement schedule of the Company as of and for the year ended December 31, 2011 and our report dated February 27, 2012 expressed an unqualified opinion on those financial statements and financial statement schedule.

/s/ DELOITTE & TOUCHE LLP
Deloitte & Touche LLP

Chicago, Illinois
February 27, 2012

None.

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Directors

The information appearing under the caption "Election of our Board of Directors" in our Proxy Statement for the Annual Meeting of Stockholders to be held May 7, 2012 (the "Proxy Statement") is incorporated herein by reference.

Executive Officers

Our executive officers, their ages at December 31, 2011, and their positions with us are set forth below. Our executive officers are elected by and serve at the discretion of our Board of Directors.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Robert L. Wagman	47	President, Chief Executive Officer and Director
John S. Quinn	53	Executive Vice President and Chief Financial Officer
Victor M. Casini	49	Senior Vice President, General Counsel, Corporate Secretary and Director
Walter P. Hanley	45	Senior Vice President—Development
Steven Greenspan	50	Senior Vice President of Operations—Wholesale Parts Division
Michael S. Clark	37	Vice President—Finance and Controller

Robert L. Wagman became our President and Chief Executive Officer on January 1, 2012. He was elected to our Board of Directors on November 7, 2011. Mr. Wagman was our President and Co-Chief Executive Officer from January 1, 2011 to January 1, 2012. Prior thereto, he had been our Senior Vice President of Operations—Wholesale Parts Division, with oversight of our wholesale late model operations since August 2009. Prior thereto, from October 1998, Mr. Wagman managed our insurance company relationships, and from February 2004, added to his responsibilities the oversight of our aftermarket product operations. He was elected our Vice President of Insurance Services and Aftermarket Operations in August 2005. Before joining us, Mr. Wagman served from April 1995 to October 1998 as the Outside Sales Manager of Triplett Auto Parts, Inc., a recycled auto parts company that we acquired in July 1998. He started in our industry in 1987 as an Account Executive for Copart Auto Auctions, a processor and seller of salvage vehicles through auctions.

John S. Quinn has been our Executive Vice President and Chief Financial Officer since November 2009. Prior to joining our Company, he was the Senior Vice President, Chief Financial Officer and Treasurer of Casella Waste Systems, Inc., a company in the solid waste management services industry from January 2009. From January 2001 to January 2009 he held various positions of increasing responsibility with Allied Waste Industries, Inc., a company also in the solid waste management services industry, including Senior Vice President of Finance from January 2005 to January 2009, Controller and Chief Accounting Officer from November 2006 to September 2007 and Vice President Financial Analysis and Planning from January 2003 to January 2005. From August 1987 to January 2001, he held various positions with Waste Management Inc. and Waste Management International, plc. in Canada and the United Kingdom. Prior to working for Waste Management, he worked for Ford Glass Ltd., a subsidiary of Ford Motor Company.

Victor M. Casini has been our Vice President, General Counsel and Corporate Secretary from our inception in February 1998. In March 2008, he was elected Senior Vice President. Mr. Casini has been a member of our Board of Directors since May 2010. From July 1992 to December 2011, Mr. Casini was the Executive Vice President and General Counsel of Flynn Enterprises, Inc., a venture capital, hedging and consulting firm. Mr. Casini served as Senior Vice President, General Counsel and Corporate Secretary of Discovery Zone, Inc., an operator and franchisor of family entertainment centers, from July 1992 until May 1995. Prior to July 1992, Mr. Casini practiced corporate and securities law with the law firm of Bell, Boyd & Lloyd LLP in Chicago, Illinois for more than five years.

Walter P. Hanley joined us in December 2002 as our Vice President of Development, Associate General Counsel and Assistant Secretary. In December 2005, he became our Senior Vice President of Development. Mr. Hanley served as Senior Vice President, General Counsel and Secretary of Emerald Casino, Inc., an owner of a license to operate a riverboat casino in the State of Illinois, from June 1999 until August 2002. In January 2001, the Illinois Gaming Board issued an initial decision seeking to revoke Emerald's license. In July 2002, certain creditors filed a bankruptcy petition against Emerald. The bankruptcy court confirmed a plan of reorganization in July 2004. The Illinois Gaming Board reversed its initial decision to support the plan of reorganization and in May 2005 revoked Emerald's license. The bankruptcy case and a related adversary proceeding (in which Mr. Hanley is a defendant) are pending. Mr. Hanley served as Senior Vice President, General Counsel and Secretary of Blue Chip Casino, Inc., an owner and operator of a riverboat gaming vessel in Michigan City, Indiana, from July 1996 until November 1999. Mr. Hanley served as Vice President and Associate General Counsel of Flynn Enterprises, Inc. from May 1995 until February 1998 and as Associate General Counsel of Discovery Zone, Inc. from March 1993 until May 1995. Prior to March 1993, Mr. Hanley practiced corporate and securities law with the law firm of Bell, Boyd & Lloyd LLP in Chicago, Illinois.

Steven Greenspan became our Senior Vice President of Operations – Wholesale Parts Division on January 1, 2012. Mr. Greenspan has been in the recycled automotive parts industry for approximately 30 years. He served as our Regional Vice President—Mid-Atlantic Region from January 2003 to December 2011. He was the Manager of our Atlanta facility from May 1998 until December 2002. Prior thereto, he was the Manager of a company that we acquired in 1998.

Michael S. Clark has been our Vice President—Finance and Controller since February 2011. Prior thereto, he served as our Assistant Controller since May 2008. Prior to joining our Company, he was the SEC Reporting Manager of FMC Technologies, Inc., a global provider of technology solutions for the energy industry, from December 2004 to May 2008. Before joining FMC Technologies, Mr. Clark, a certified public accountant, worked in public accounting for more than eight years, leaving as a Senior Manager in the audit practice of Deloitte & Touche.

Code of Ethics

A copy of our Code of Ethics for Financial Officers is available free of charge through our website at www.lkqcorp.com.

Section 16 Compliance

Information appearing under the caption "Other Information—Section 16(a) Beneficial Ownership Reporting Compliance" in the Proxy Statement is incorporated herein by reference.

Audit Committee

Information appearing under the caption "Corporate Governance—Meetings and Committees of the Board—Audit Committee" in the Proxy Statement is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

Information appearing under the captions "Director Compensation—Director Compensation Table," "Executive Compensation—Compensation Discussion and Analysis," "Corporate Governance—Compensation Committee Interlocks and Insider Participation" and "Executive Compensation—Compensation Tables" in the Proxy Statement is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information appearing under the caption “Other Information—Principal Stockholders” in the Proxy Statement and appearing under the caption “Equity Compensation Plan Information” in Item 5 of this Annual Report is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information appearing under the captions “Other Information—Certain Transactions,” “Election of Our Board of Directors” and “Corporate Governance—Director Independence” in the Proxy Statement is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information appearing under the caption “Appointment of Our Independent Registered Public Accounting Firm—Audit Fees and Non-Audit Fees” and “Appointment of Our Independent Registered Public Accounting Firm—Policy on Audit Committee Approval of Audit and Non-Audit Services” in the Proxy Statement is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a)(1) Financial Statements

Reference is made to the information set forth in Part II, Item 8 of this Report, which information is incorporated herein by reference.

(a)(2) Financial Statement Schedules

Other than as set forth below, all schedules for which provision is made in the applicable accounting regulations of the SEC have been omitted because they are not required under the related instructions, are not applicable, or the information has been provided in the consolidated financial statements or the notes thereto.

Schedule II—Valuation and Qualifying Accounts and Reserves

Descriptions	Balance at Beginning of Period	Additions Charged to Costs and Expenses	Acquisitions and Other (in thousands)	Deductions	Balance at End of Period
ALLOWANCE FOR DOUBTFUL ACCOUNTS:					
Year ended December 31, 2009	\$ 5,757	\$ 5,102	\$ 831	\$ (5,183)	\$ 6,507
Year ended December 31, 2010	6,507	4,326	1,125	(5,063)	6,895
Year ended December 31, 2011	6,895	5,084	2,199	(5,831)	8,347
ALLOWANCE FOR ESTIMATED RETURNS, DISCOUNTS & ALLOWANCES:					
Year ended December 31, 2009	\$ 11,169	\$ 469,178	\$ 1,915	\$ (466,460)	\$ 15,802
Year ended December 31, 2010	15,802	541,314	1,061	(539,992)	18,185
Year ended December 31, 2011	18,185	668,936	2,754	(667,071)	22,804

(a)(3) Exhibits

The exhibits to this Annual Report are listed in Item 15(b) of this Annual Report. Included in the exhibits listed therein are the following exhibits which constitute management contracts or compensatory plans or arrangements:

- 10.1 LKQ Corporation Amended and Restated Stock Option and Compensation Plan for Non-Employee Directors, as amended.
- 10.2 LKQ Corporation 1998 Equity Incentive Plan, as amended.
- 10.3 LKQ Corporation 401(k) Plus Plan dated August 1, 1999.
- 10.4 Amendment to LKQ Corporation 401(k) Plus Plan.
- 10.5 Trust for LKQ Corporation 401(k) Plus Plan.
- 10.6 LKQ Corporation Employees' Retirement Plan, as amended and restated as of January 1, 2012.
- 10.7 Trust Agreement for LKQ Corporation Employees' Retirement Plan.
- 10.8 LKQ Corporation 401(k) Plus Plan II, as amended and restated effective as of January 1, 2011.
- 10.9 Form of LKQ Corporation Award Agreement for options granted under the 1998 Equity Incentive Plan.
- 10.10 Form of Indemnification Agreements between directors and officers of LKQ Corporation and LKQ Corporation.

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- 10.11 Form of LKQ Corporation Executive Officer 2010 Bonus Program.
 - 10.12 LKQ Management Incentive Plan.
 - 10.13 Form of LKQ Corporation Executive Officer 2011 Bonus Program Award Memorandum.
 - 10.14 LKQ Corporation Long Term Incentive Plan.
 - 10.15 Form of LKQ Corporation Restricted Stock Agreement.
 - 10.16 Form of Restricted Stock Unit Agreement for Non-Employee Directors.
 - 10.17 Consulting Agreement, as amended and restated, dated as of May 21, 2009 between LKQ Corporation and Joseph M. Holsten.
 - 10.18 Amendment Agreement dated as of January 31, 2011 to the Consulting Agreement between LKQ Corporation and Joseph M. Holsten dated as of May 21, 2009.
 - 10.22 Change of Control Agreement dated as of December 6, 2010 between LKQ Corporation and Joseph M. Holsten.
 - 10.23 Change of Control Agreement dated as of December 6, 2010 between LKQ Corporation and Robert L. Wagman.
 - 10.24 Change of Control Agreement dated as of December 6, 2010 between LKQ Corporation and John S. Quinn.
 - 10.25 Change of Control Agreement dated as of December 6, 2010 between LKQ Corporation and Walter P. Hanley.
 - 10.26 Change of Control Agreement dated as of December 6, 2010 between LKQ Corporation and Victor M. Casini.
 - 10.27 Change of Control Agreement dated as of March 24, 2011 between LKQ Corporation and Michael S. Clark.
 - 10.28 Form of LKQ Corporation Restricted Stock Unit Agreement.

(b) Exhibits

- 3.1 Certificate of Incorporation of LKQ Corporation, as amended to date (incorporated herein by reference to Exhibit 3.1 (iii) to the Company's report on Form 10-K for the fiscal year ended December 31, 2003).
- 3.2 Amended and Restated Bylaws of LKQ Corporation (incorporated herein by reference to Exhibit 3.1 to the Company's report on Form 8-K filed with the SEC on November 3, 2010).
- 4.1 Specimen of common stock certificate (incorporated herein by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1/A, Registration No. 333-107417 filed with the SEC on September 12, 2003).
- 4.2 Amendment and Restatement Agreement dated as of September 30, 2011 by and among LKQ Corporation, LKQ Delaware LLP, and certain additional subsidiaries of LKQ Corporation, as borrowers, certain financial institutions, as lenders, and JP Morgan Chase Bank, N.A., as administrative agent (incorporated herein by reference to Exhibit 4.1 to the Company's report on Form 10-Q filed with the SEC on October 28, 2011).
- 10.1 LKQ Corporation Amended and Restated Stock Option and Compensation Plan for Non-Employee Directors, as amended (incorporated herein by reference to Exhibit 10.5 to the Company's report on Form 10-Q filed with the SEC on November 7, 2008).

- 10.2 LKQ Corporation 1998 Equity Incentive Plan, as amended (incorporated herein by reference to Exhibit 99.1 to the Company's report on Form 8-K filed with the SEC on April 26, 2011).
- 10.3 LKQ Corporation 401(k) Plus Plan dated August 1, 1999 (incorporated herein by reference to Exhibit 10.23 to the Company's Registration Statement on Form S-1, Registration No. 333-107417 filed with the SEC on July 28, 2003).
- 10.4 Amendment to LKQ Corporation 401(k) Plus Plan (incorporated herein by reference to Exhibit 10.24 to the Company's Registration Statement on Form S-1, Registration No. 333-107417 filed with the SEC on July 28, 2003).
- 10.5 Trust for LKQ Corporation 401(k) Plus Plan (incorporated herein by reference to Exhibit 10.25 to the Company's Registration Statement on Form S-1, Registration No. 333-107417 filed with the SEC on July 28, 2003).
- 10.6 LKQ Corporation Employees' Retirement Plan, as amended and restated as of January 1, 2012.
- 10.7 Trust Agreement for LKQ Corporation Employees' Retirement Plan (incorporated herein by reference to Exhibit 10.10 to the Company's report on Form 10-K for the year ended December 31, 2008).
- 10.8 LKQ Corporation 401(k) Plus Plan II, as amended and restated effective as of January 1, 2011 (incorporated herein by reference to Exhibit 10.8 to the Company's report on Form 10-K for the year ended December 31, 2010).
- 10.9 Form of LKQ Corporation Award Agreement for options granted under the 1998 Equity Incentive Plan (incorporated herein by reference to Exhibit 99.1 to the Company's report on Form 8-K filed with the SEC on January 11, 2005).
- 10.10 Form of Indemnification Agreement between directors and officers of LKQ Corporation and LKQ Corporation (incorporated herein by reference to Exhibit 10.30 to the Company's Registration Statement on Form S-1, Registration No. 333-107417 filed with the SEC on July 28, 2003).
- 10.11 Form of LKQ Corporation Executive Officer 2010 Bonus Program (incorporated herein by reference to Exhibit 99.1 to the Company's report on Form 8-K filed with the SEC on March 5, 2010).
- 10.12 LKQ Management Incentive Plan (incorporated herein by reference to Appendix A to the Company's Proxy Statement for its Annual Meeting of Stockholders on May 2, 2011 filed on March 17, 2011).
- 10.13 Form of LKQ Corporation Executive Officer 2011 Bonus Program Award Memorandum (incorporated herein by reference to Exhibit 99.1 to the Company's report on Form 8-K filed with the SEC on May 6, 2011).
- 10.14 LKQ Corporation Long Term Incentive Plan (incorporated herein by reference to Exhibit 10.1 to the Company's report on Form 8-K filed with the SEC on May 12, 2006).
- 10.15 Form of LKQ Corporation Restricted Stock Agreement (incorporated herein by reference to Exhibit 10.1 to the Company's report on Form 8-K filed with the SEC on January 17, 2008).
- 10.16 Form of Restricted Stock Unit Agreement for Non-Employee Directors (incorporated herein by reference to Exhibit 10.1 to the Company's report on Form 10-Q filed with the SEC on July 29, 2011).
- 10.17 Consulting Agreement, as amended and restated, dated as of May 21, 2009 between LKQ Corporation and Joseph M. Holsten (incorporated herein by reference to Exhibit 10.2 to the Company's report on Form 8-K filed with the SEC on May 21, 2009).
- 10.18 Amendment Agreement dated as of January 31, 2011 to the Consulting Agreement between LKQ Corporation and Joseph M. Holsten dated as of May 21, 2009 (incorporated herein by reference to Exhibit 10.1 to the Company's report on Form 8-K filed with the SEC on February 2, 2011).

10.19	ISDA 2002 Master Agreement between Bank of America, N.A. and LKQ Corporation, and related Schedule (incorporated herein by reference to Exhibit 10.1 to the Company's report on Form 10-Q filed with the SEC on April 29, 2011).
10.20	ISDA 2002 Master Agreement between JP Morgan Chase Bank, National Association and LKQ Corporation, and related Schedule (incorporated herein by reference to Exhibit 10.1 to the Company's report on Form 10-Q filed with the SEC on May 9, 2008).
10.21	ISDA 2002 Master Agreement between RBS Citizens, N.A. and LKQ Corporation, and related Schedule.
10.22	Change of Control Agreement dated as of December 6, 2010 between LKQ Corporation and Joseph M. Holsten (incorporated by reference to Exhibit 10.19 to the Company's report on Form 10-K filed with the SEC on February 25, 2011).
10.23	Change of Control Agreement dated as of December 6, 2010 between LKQ Corporation and Robert L. Wagman (incorporated by reference to Exhibit 10.20 to the Company's report on Form 10-K filed with the SEC on February 25, 2011).
10.24	Change of Control Agreement dated as of December 6, 2010 between LKQ Corporation and John S. Quinn (incorporated by reference to Exhibit 10.21 to the Company's report on Form 10-K filed with the SEC on February 25, 2011).
10.25	Change of Control Agreement dated as of December 6, 2010 between LKQ Corporation and Walter P. Hanley (incorporated by reference to Exhibit 10.22 to the Company's report on Form 10-K filed with the SEC on February 25, 2011).
10.26	Change of Control Agreement dated as of December 6, 2010 between LKQ Corporation and Victor M. Casini (incorporated by reference to Exhibit 10.23 to the Company's report on Form 10-K filed with the SEC on February 25, 2011).
10.27	Change of Control Agreement dated as of March 14, 2011 between LKQ Corporation and Michael S. Clark (incorporated herein by reference to Exhibit 10.1 to the Company's report on Form 8-K filed with the SEC on March 15, 2011).
10.28	Form of LKQ Corporation Restricted Stock Unit Agreement (incorporated herein by reference to Exhibit 10.24 to the Company's report on Form 10-K filed with the SEC on February 25, 2011).
10.29	Agreement for the Sale and Purchase of Shares in the Capital of Euro Car Parts Holdings Limited dated October 3, 2011 by and among LKQ Corporation, LKQ Euro Limited and Draco Limited.
12.1	Computation of Ratio of Earnings to Fixed Charges.
21.1	List of subsidiaries, jurisdictions and assumed names.
23.1	Consent of Deloitte & Touche LLP.
31.1	Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) or Rule 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer Pursuant to Rule 13a-14(a) or Rule 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document

101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on February 27, 2012.

LKQ CORPORATION

By: _____ /s/ **ROBERT L. WAGMAN**
Robert L. Wagman
President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated on February 27, 2012.

<u>Signature</u>	<u>Title</u>
Principal Executive Officer: _____/s/ ROBERT L. WAGMAN Robert L. Wagman	President and Chief Executive Officer
Principal Financial Officer: _____/s/ JOHN S. QUINN John S. Quinn	Executive Vice President and Chief Financial Officer
Principal Accounting Officer: _____/s/ MICHAEL S. CLARK Michael S. Clark	Vice President—Finance and Controller
A Majority of the Directors: _____/s/ A. CLINTON ALLEN A. Clinton Allen	Director
_____/s/ VICTOR M. CASINI Victor M. Casini	Director
_____/s/ KEVIN F. FLYNN Kevin F. Flynn	Director
_____/s/ RONALD G. FOSTER Ronald G. Foster	Director
_____/s/ JOSEPH M. HOLSTEN Joseph M. Holsten	Director
_____/s/ PAUL M. MEISTER Paul M. Meister	Director
_____/s/ JOHN F. O'BRIEN John F. O'Brien	Director
_____/s/ ROBERT L. WAGMAN Robert L. Wagman	Director
_____/s/ WILLIAM M. WEBSTER, IV William M. Webster, IV	Director

LKQ CORPORATION EMPLOYEES' RETIREMENT PLAN

**ADOPTION AGREEMENT #005
NONSTANDARDIZED 401(k) PLAN
[Related Employers only]**

The undersigned Employer, by executing this Adoption Agreement, establishes a retirement plan and trust (collectively "Plan") under the Wells Fargo Defined Contribution Prototype Plan and Trust Agreement (basic plan document #01). The Employer, subject to the Employer's Adoption Agreement elections, adopts fully the Prototype Plan and Trust provisions. This Adoption Agreement, the basic plan document and any attached Appendices or agreements permitted or referenced therein, constitute the Employer's entire plan and trust document. All "Election" references within this Adoption Agreement are Adoption Agreement Elections. All "Article" or "Section" references are basic plan document references. Numbers in parentheses which follow election numbers are basic plan document references. Where an Adoption Agreement election calls for the Employer to supply text, the Employer (without altering the content of any existing printed text) may lengthen any space or line, or create additional tiers. When Employer-supplied text uses terms substantially similar to existed printed options, all clarifications and caveats applicable to the printed options apply to the Employer-supplied text unless the context requires otherwise. The Employer makes the following elections granted under the corresponding provisions of the basic plan document.

**ARTICLE I
DEFINITIONS**

1. **EMPLOYER (1.23)**.

Name: LKQ Corporation
Address: 655 Grassmere Park Drive, Nashville, Tennessee 37211-3659
Phone number: 615-781-5133
E-mail (optional) :
Employer's Taxable Year: December 31st
EIN: 36-4215970

2. **PLAN (1.40)**.

Name: LKQ Corporation Employees' Retirement Plan
Plan number: 001 (3-digit number for Form 5500 reporting)
Trust EIN (optional) :

3. **PLAN/LIMITATION YEAR (1.42/1.33)**. Plan Year and Limitation Year mean the 12 consecutive month period (except for a short Plan/Limitation Year) ending every (Complete (a) and (b)) :

[Note: Complete any applicable blanks under Election 3 with a specific date, e.g., "June 30" OR "the last day of February" OR "the first Tuesday in January." In the case of a Short Plan Year or a Short Limitation Year, include the year, e.g., "May 1, 2008."]

(a) **Plan Year** (Choose one of (1) or (2) and choose (3) if applicable) :

- (1) **December 31**.
(2) **Fiscal Plan Year**: ending: .
(3) **Short Plan Year**: commencing: and ending: .

(b) **Limitation Year** (Choose one of (1) or (2) and choose (3) if applicable) :

- (1) **Generally same as Plan Year**. The Limitation Year is the same as the Plan Year except where the Plan Year is a short year in which event the Limitation Year is always a 12 month period, unless the short Plan Year (and short Limitation Year) result from a Plan amendment.
(2) **Different Limitation Year**: ending: .
(3) **Short Limitation Year**: commencing: and ending: .

4. **EFFECTIVE DATE (1.19)**. The Employer's adoption of the Plan is a (Choose one of (a), (b), or (c). Choose (d) if applicable) :

- (a) **New Plan**. The Plan's Effective Date is: .
(b) **Restated Plan**. The Plan's restated Effective Date is: January 1, 2012. The Plan's original Effective Date was: August 1, 1999 .

[Note: See Section 1.51 for the definition of Restated Plan. If this Plan is an EGTRRA restatement: (i) the EGTRRA restatement Effective Date must be the later of the beginning of the 2002 Plan Year or the Plan's original Effective Date; and (ii) if specific Plan provisions, as reflected in this Adoption Agreement, do not date back to the EGTRRA restatement Effective Date, indicate as such in Appendix A.]

(c) **Restatement of surviving and merging plans.** The Plan restates two (or more) plans (*Complete (1) and (2). Choose (3) as applicable*):

(1) **This (surviving) Plan.** The Plan's restated Effective Date is: _____. The Plan's original Effective Date was: _____.

[*Note: If this Plan is an EGTRRA restatement: (i) the EGTRRA restatement Effective Date must be the later of the beginning of the 2002 Plan Year or the Plan's original Effective Date; and (ii) if specific Plan provisions, as reflected in this Adoption Agreement, do not date back to the EGTRRA restatement Effective Date, indicate as such in Appendix A.]*

(2) **Merging plan.** The _____ Plan was or will be merged into this surviving Plan as of: _____. The merging plan's restated Effective Date is: _____. The merging plan's original Effective Date was: _____.

[*See the Note under Election 4(c)(1) if this document is the merging plan's EGTRRA restatement.]*

(3) **Additional merging plans.** The following additional plans were or will be merged into this surviving Plan (*Complete a. and b. as applicable*):

	<u>Name of merging plan</u>	<u>Merger date</u>	<u>Restated Effective Date</u>	<u>Original Effective Date</u>
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____

(d) **Special Effective Date for Elective Deferral provisions:**

5. **TRUSTEE (1.65)**. The Trustee executing this Adoption Agreement is (*Choose one or more of (a), (b), or (c). Choose (d) if applicable*):

(a) **A discretionary Trustee.** See Section 8.02(A).

(b) **A nondiscretionary (directed) Trustee or Custodian.** See Section 8.02(B).

(c) **A Trustee under the:** _____ (*specify name of trust*), a separate trust agreement the Trustee has executed and that the IRS has approved for use with this Plan. Under this Election 5(c) the Trustee is not executing the Adoption Agreement and Article VIII of the basic plan document does not apply, except as indicated otherwise in the separate trust agreement. See Section 8.11(C).

(d) **Permitted Trust amendments apply.** Under Section 8.11 the Employer in Appendix C has made certain permitted amendments to the Trust. Such amendments do not constitute a separate trust under Election 5(c).

6. **CONTRIBUTION TYPES (1.12)**. The Employer and/or Participants, in accordance with the Plan terms, make the following Contribution Types to the Plan/Trust (*Choose one or more of (a) through (h) as applicable. Choose (i) if applicable*):

(a) **Pre-Tax Deferrals.** See Section 3.02 and Elections 20-23.

(b) **Roth Deferrals.** See Section 3.02(E) and Elections 20, 21, and 23. [*Note: The Employer may not limit Elective Deferrals to Roth Deferrals only.]*

(c) **Matching.** See Sections 1.34 and 3.03 and Elections 24-26. [*Note: The Employer may make an Operational QMAC without electing 6(c). See Section 3.03(C)(2).]*

(d) **Nonelective.** See Sections 1.37 and 3.04 and Elections 27-29. [*Note: The Employer may make an Operational QNEC without electing 6(d). See Section 3.04(C)(2).]*

(e) **Safe Harbor/Additional Matching.** The Plan is (or pursuant to a delayed election, may be) a safe harbor 401(k) Plan. The Employer will make (or under a delayed election, may make) Safe Harbor Contributions as it elects in Election 30. The Employer may or may not make Additional Matching Contributions as it elects in Election 30. See Election 26 as to matching Catch-Up Deferrals. See Section 3.05.

(f) **Employee (after-tax).** See Section 3.09 and Election 35.

(g) **SIMPLE 401(k).** The Plan is a SIMPLE 401(k) Plan. See Section 3.10. The Employer operationally will elect for each Plan Year to make a SIMPLE Matching Contribution or a SIMPLE Nonelective Contribution as described in Section 3.10(E). The Employer must notify Participants of the Employer's SIMPLE contribution election and of the Participants' deferral election rights and limitations within a reasonable period of time before the 60th day prior to the beginning of the Plan Year. [*Note: The Employer electing 6(g) may not elect any other Contribution Types except under Elections 6(a), 6(b), and 6(h).]*

(h) **Designated IRA.** See Section 3.12 and Election 36.

(i) **None (frozen plan).** The Plan is/was frozen effective as of: _____. See Sections 3.01(J) and 11.04.

[*Note: Elections 20 through 30 and Elections 35 through 37 do not apply to any Plan Year in which the Plan is frozen.]*

7. **DISABILITY (1.15)**. Disability means (Choose one of (a) or (b)) :

- (a) **Basic Plan**. Disability as defined in Section 1.15(A).
- (b) **Describe** : sickness or injury, to the extent the participant is prevented from engaging in any substantial gainful activity as determined by a certified physician, or as approved by the Plan Administrator, or is eligible for and receives a disability benefit under Title II of the Federal Social Security Act.

[Note: The Employer may elect an alternative definition of Disability for purposes of Plan distributions. However, the use of an alternative definition may result in loss of favorable tax treatment of the Disability distribution.]

8. **EXCLUDED EMPLOYEES (1.21(D))**. The following Employees are not Eligible Employees but are Excluded Employees (Choose one of (a) or (b)) :

[Note: Regardless of the Employer's elections under Election 8: (i) Employees of any Related Employers (excluding the Signatory Employer) are Excluded Employees unless the Related Employer becomes a Participating Employer; and (ii) Reclassified Employees and Leased Employees are Excluded Employees unless the Employer in Appendix B elects otherwise. See Sections 1.21(B), 1.21(D)(3) and 1.23(D).]

- (a) **No Excluded Employees**. All Employees are Eligible Employees as to all Contribution Types.
- (b) **Exclusions**. The following Employees are Excluded Employees (either as to all Contribution Types or to the designated Contribution Type) (Choose one or more of (1) through (7) as applicable) :

[Note: For this Election 8, unless described otherwise in Election 8(b)(7), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals, Employee Contributions and Safe Harbor Contributions. Matching includes all Matching Contributions except Safe Harbor Matching Contributions. Nonelective includes all Nonelective Contributions except Safe Harbor Nonelective Contributions.]

		(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonelective
(1)	<input type="checkbox"/> No exclusions . No exclusions as to the designated Contribution Type.	N/A (See Election 8(a))		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	<input checked="" type="checkbox"/> Collective Bargaining (union) Employees . As described in Code §410(b)(3)(A). See Section 1.21(D)(1).	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3)	<input checked="" type="checkbox"/> Non-Resident Aliens . As described in Code §410(b)(3)(C). See Section 1.21(D)(2).	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4)	<input type="checkbox"/> HCEs . See Section 1.21(E). See Election 30(e) as to exclusion of some or all HCEs from Safe Harbor Contributions.	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5)	<input type="checkbox"/> Hourly paid Employees .	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6)	<input type="checkbox"/> Part-Time/Temporary/Seasonal Employees . See Section 1.21(D)(4). A Part-Time, Temporary or Seasonal Employee is an Employee whose regularly scheduled Service is less than _____ (specify a maximum of 1,000) Hours of Service in the relevant Eligibility Computation Period.	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[Note: If the Employer under Election 8(b)(6) elects to treat Part-Time, Temporary and Seasonal Employees as Excluded Employees and any such an Employee actually completes at least 1,000 Hours of Service during the relevant Eligibility Computation Period, the Employee becomes an Eligible Employee. See Section 1.21(D)(4) .]

- (7) **Describe exclusion category and/or Contribution Type:** _____ (e.g., Exclude Division B Employees OR Exclude salaried Employees from Discretionary Matching Contributions.)

[Note: Any exclusion under Election 8(b)(7), except as to Part-Time/Temporary/Seasonal Employees, may not be based on age or Service or level of Compensation. See Election 14 for eligibility conditions based on age or Service.]

9. **COMPENSATION (1.11(B))** . The following base Compensation (as adjusted under Elections 10 and 11) applies in allocating Employer Contributions (or the designated Contribution Type) (Choose one or more of (a) through (d) as applicable) :

[Note: For this Election 9 all definitions include Elective Deferrals unless excluded under Election 11. See Section 1.11(D). Unless described otherwise in Election 9(d), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals and Employee Contributions. Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions. In applying any Plan definition which references Section 1.11 Compensation, where the Employer in this Election 9 elects more than one Compensation definition for allocation purposes, the Plan Administrator will use W-2 Wages for such other Plan definitions if the Employer has elected W-2 Wages for any Contribution Type or Participant group under Election 9. If the Employer has not elected W-2 Wages, the Plan Administrator for such other Plan definitions will use 415 Compensation.]

		(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonelective
(a)	<input type="checkbox"/> W-2 Wages (plus Elective Deferrals). See Section 1.11(B)(1).	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b)	<input type="checkbox"/> Code §3401 Federal Income Tax Withholding Wages (plus Elective Deferrals). See Section 1.11(B)(2).	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c)	<input checked="" type="checkbox"/> 415 Compensation (simplified). See Section 1.11(B)(3). [Note: The Employer may elect an alternative "general 415 Compensation" definition by electing 9(c) and by electing the alternative definition in Appendix B. See Section 1.11(B)(4).]	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(d) **Describe Compensation by Contribution Type or by Participant group:**

[Note: Under Election 9(d), the Employer may: (i) elect Compensation from the elections available under Elections 9(a), (b), or (c), or a combination thereof as to a Participant group (e.g., W-2 Wages for Matching Contributions for Division A Employees and 415 Compensation in all other cases); and/or (ii) define the Contribution Type column headings in a manner which differs from the "all-inclusive" description in the Note immediately preceding Election 9(a) (e.g., Compensation for Safe Harbor Matching Contributions means W-2 Wages and for Additional Matching Contributions means 415 Compensation).]

10. **PRE-ENTRY/POST-SEVERANCE COMPENSATION (1.11(H)(I))** . Compensation under Election 9 (Complete (a). Choose (b) if applicable) :

[Note: The Plan does not take into account Post-Severance Compensation unless the Employer elects otherwise in Appendix B or except as otherwise specified in a Plan amendment. For this Election 10, unless described otherwise in Election 10(b), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals and Employee Contributions, Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions.]

		(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonelective
(a)	<input checked="" type="checkbox"/> Pre-Entry Compensation. Includes (Choose (1) and (2) as applicable) :					
(1)	<input checked="" type="checkbox"/> Plan Year. Compensation for the entire Plan Year which includes the Participant's Entry Date.	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	<input type="checkbox"/> Participating Compensation. Only Participating Compensation. See Section 1.11(H)(1).	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[Note: Under a Participating Compensation election, in applying any Adoption Agreement elected contribution limit or formula, the Plan Administrator will count only the Participant's Participating Compensation. See Section 1.11(H)(1) as to plan disaggregation.]

(b) **Describe Pre-Entry Compensation by Contribution Type or by Participant group:** _____

[Note: Under Election 10(b), the Employer may: (i) elect Compensation from the elections available under Election 10(a) or a combination thereof as to a Participant group (e.g., Participating Compensation for all Contribution Types as to Division A Employees, Plan Year Compensation for all Contribution Types to Division B Employees); and/or (ii) define the Contribution Type column headings in a manner which differs from the "all-inclusive" description in the Note immediately preceding Election 10(a) (e.g., Compensation for Nonelective Contributions is Participating Compensation and for Safe Harbor Nonelective Contributions is Plan Year Compensation).]

11. **EXCLUDED COMPENSATION (1.11(G))** . Apply the following Compensation exclusions to Elections 9 and 10 (Choose one of (a) or (b)) :

- (a) **No exclusions.** Compensation as to all Contribution Types means Compensation as elected in Elections 9 and 10.
 (b) **Exclusions.** Exclude the following (Choose one or more of (1) through (9) as applicable) :

[Note: In a safe harbor 401(k) plan, allocations qualifying for the ADP or ACP test safe harbors must be based on a non-discriminatory definition of Compensation. If the Plan applies permitted disparity, allocations also must be based on a non-discriminatory definition of Compensation if the Plan is to avoid more complex testing. Elections 11(b)(4) through (b)(9) may cause allocation Compensation to fail to be non-discriminatory. In a non-safe harbor 401(k) plan, Elections 11(b)(4) through (b)(9) which result in Compensation failing to be non-discriminatory may result in more complex nondiscrimination testing. For this Election 11, unless described otherwise in Election 11(b)(9), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals and Employee Contributions, Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions.]

			(1) All Contributions		(2) Elective Deferrals		(3) Matching		(4) Nonelective
(1)	<input type="checkbox"/>	No exclusions-limited. No exclusions as to the designated Contribution Type(s).	N/A (See Election 11(a))		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
(2)	<input type="checkbox"/>	Elective Deferrals. See Section 1.20.	N/A		N/A		<input type="checkbox"/>		<input type="checkbox"/>
(3)	<input checked="" type="checkbox"/>	Fringe benefits. As described in Treas. Reg. §1.414(s)-1(c)(3).	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
(4)	<input type="checkbox"/>	Compensation exceeding \$. Apply this election to (Choose one of a. or b.) :	<input type="checkbox"/>	OR	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
	a.	<input type="checkbox"/> All Participants. [Note: If the Employer elects Safe Harbor Contributions under Election 6(e), the Employer may not elect 11(b)(4)a. to limit the Safe Harbor Contribution allocation to the NHCEs.]							
	b.	<input type="checkbox"/> HCE Participants only.							
(5)	<input type="checkbox"/>	Bonus.	<input type="checkbox"/>	OR	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
(6)	<input type="checkbox"/>	Commission.	<input type="checkbox"/>	OR	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
(7)	<input type="checkbox"/>	Overtime.	<input type="checkbox"/>	OR	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
(8)	<input type="checkbox"/>	Related Employers. See Section 1.23(C). (If there are Related Employers, choose one or both of a. and b. as applicable):							
	a.	<input type="checkbox"/> Non-Participating. Compensation paid to Employees by a Related Employer that is not a Participating Employer.	<input type="checkbox"/>	OR	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
	b.	<input type="checkbox"/> Participating. As to the Employees of any Participating Employer, Compensation paid by any other Participating Employer to its Employees. See Election 28(g)(2)a.	<input type="checkbox"/>	OR	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
(9)	<input checked="" type="checkbox"/>	Describe Compensation exclusion(s): long-term incentive plan payments and performance award bonuses are excluded from All Contributions.							

[Note: Under Election 11(b)(9), the Employer may: (i) describe Compensation from the elections available under Elections 11(b)(1) through (8), or a combination thereof as to a Participant group (e.g., No exclusions as to Division A Employees and exclude bonus as to Division B Employees); (ii) define the Contribution Type column headings in a manner which differs from the "all-inclusive" description in the Note immediately preceding Election 11(b)(1) (e.g., Elective Deferrals means §125 cafeteria deferrals only OR No exclusions as to Safe Harbor Contributions and exclude bonus as to Nonelective Contributions); and/or (iii) describe another exclusion (e.g., Exclude shift differential pay).]

12. **HOURS OF SERVICE (1.31)** . The Plan credits Hours of Service for the following purposes (and to the Employees described in Elections 12(d) or (e)) as follows (Choose one or more of (a) through (e) as applicable) :

		(1) All Purposes		(2) Eligibility	(3) Vesting	(4) Allocation Conditions
(a)	<input checked="" type="checkbox"/> Actual Method. See Section 1.31(A)(1).	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b)	<input type="checkbox"/> Equivalency Method: (e.g., daily, weekly, etc.) . See Section 1.31(A)(2).	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c)	<input type="checkbox"/> Elapsed Time Method. See Section 1.31(A)(3).	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d)	<input type="checkbox"/> Actual (hourly) and Equivalency (salaried). Actual Method for hourly paid Employees and Equivalency Method: (e.g., daily, weekly, etc.) for salaried Employees.	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e)	<input type="checkbox"/> Describe method:					

[Note: Under Election 12(e), the Employer may describe Hours of Service from the elections available under Elections 12(a) through (d), or a combination thereof as to a Participant group and/or Contribution Type (e.g., For all purposes, Actual Method applies to office workers and Equivalency Method applies to truck drivers).]

13. **ELECTIVE SERVICE CREDITING (1.56(C))** . The Plan must credit Related Employer Service under Section 1.23(C) and also must credit certain Predecessor Employer/Predecessor Plan Service under Section 1.56(B). The Plan also elects under Section 1.56(C) to credit as Service the following Predecessor Employer service (Choose one of (a) or (b)) :

- (a) **Not applicable.** No elective Predecessor Employer Service crediting applies.
- (b) **Applies.** The Plan credits the specified service with the following designated Predecessor Employers as Service for the Employer for the purposes indicated (Choose (1) and (2) as applicable. Complete (3). Choose (4) if applicable) :

[Note: Any elective Service crediting under this Election 13 must be nondiscriminatory.]

(1) **All purposes.** Credit Service for all purposes with Predecessor Employer(s): (insert as many names as needed) .

(2) **Designated purposes.** Credit Service with the following Predecessor Employer(s) for the designated purpose(s):

a. **Employer:**

(1) Eligibility	(2) Vesting	(3) Contribution Allocation
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

b. **Employer:**

c. **Employer:**

(3) **Time period.** Under Elections 13(b)(1) or (2), the Plan credits (Choose one or more of a., b., and c. as applicable) :

a. **All.** All Service under Election(s) 13(b) , regardless of when rendered.

b. **Service after.** All Service under Election(s) 13(b) , which is or was rendered after: (specify date).

c. **Service before.** All Service under Election(s) 13(b) , which is or was rendered before: (specify date).

(4) **Describe elective Predecessor Employer Service crediting:** An Employee's service with a Predecessor Employer that did not maintain this Plan shall be included as service with the Employer for purposes of eligibility, vesting and allocation conditions. An Employee's service with such Predecessor Employer shall be counted only if service continued with the Employer without interruption. This service includes service performed while a proprietor or partner. See attached Addendum for a listing of Predecessor Employers on or after January 1, 2012.

[Note: Under Election 13(b)(4), the Employer may describe service crediting from the elections available under Elections 13(b)(1) through (3), or a combination thereof as to a Participant group and/or Contribution Type (e.g., For all purposes credit service with X only on/after 1/1/05 OR Credit all service for all purposes with entities the Employer acquires after 12/31/04 OR Service crediting for X Company applies only for purposes of Nonelective Contributions and not for Matching Contributions).]

**ARTICLE II
ELIGIBILITY REQUIREMENTS**

14. **ELIGIBILITY (2.01)** . To become a Participant in the Plan, an Eligible Employee must satisfy (Choose one of (a) or (b)) :

[Note: If the Employer under a safe harbor plan elects "early" eligibility for Elective Deferrals (e.g., less than one Year of Service and age 21), but does not elect early eligibility for any Safe Harbor Contributions, also see Election 30 (f).]

(a) **No conditions.** No eligibility conditions as to all Contribution Types. Entry is on the Employment Commencement Date (if that date is also an Entry Date), or if later, upon the next following Plan Entry Date.

[Note: No eligibility conditions apply to Prevailing Wage Contributions unless the Prevailing Wage Contract provides otherwise. See Section 2.01(D).]

(b) **Conditions.** The following eligibility conditions (either as to all Contribution Types or as to the designated Contribution Type) (Choose one or more of (1) through (8) as applicable) :

[Note: For this Election 14, unless described otherwise in Election 14(b)(8)), or the context otherwise requires, Elective Deferrals includes Pre-Tax Deferrals, Roth Elective Deferrals and Employee Contributions, Matching includes all Matching Contributions (except Safe Harbor Matching Contributions under Section 3.05(E)(3) and Operational QMACs under Section 3.03(C)(2)) and Nonelective includes all Nonelective Contributions (except Safe Harbor Nonelective Contributions under Section 3.05(E)(2) and Operational QNECs under Section 3.04(C)(2)). Safe Harbor includes Safe Harbor Nonelective and Safe Harbor Matching Contributions. If the Employer elects more than one Year of Service as to Additional Matching, the Plan will not satisfy the ACP test safe harbor. See Section 3.05(F)(3).]

			(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonelective	(5) Safe Harbor
(1)	<input type="checkbox"/>	None. Entry on the Employment Commencement Date (if that date is also an Entry Date) or if later, upon the next following Plan Entry Date.	N/A (See Election 14(a))		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	<input checked="" type="checkbox"/>	Age 21 (not to exceed age 21) .	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3)	<input checked="" type="checkbox"/>	One Year of Service. See Election 16(a).	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(4)	<input type="checkbox"/>	Two Years of Service (without an intervening Break in Service). 100% vesting is required. [Note: Two Years of Service does not apply to Elective Deferrals, Safe Harbor Contributions or SIMPLE Contributions.]	N/A		N/A	<input type="checkbox"/>	<input type="checkbox"/>	N/A
(5)	<input checked="" type="checkbox"/>	6 month(s) (not exceeding 12 months for Elective Deferrals, Safe Harbor Contributions and SIMPLE Contributions and not exceeding 24 months for other contributions). If more than 12 months, 100% vesting is required. Service need not be continuous (no minimum Hours of Service required, and is mere passage of time).	<input type="checkbox"/>	OR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6)	<input type="checkbox"/>	month(s) with at least Hours of Service in each month (not exceeding 12 months for Elective Deferrals, Safe Harbor Contributions and SIMPLE Contributions and not exceeding 24 months for other contributions). If more than 12 months, 100% vesting is required. If the Employee does not complete the designated Hours of Service each month during the specified monthly time period, the Employee is subject to the one Year of Service (or two Years of Service if elect more than 12 months) requirement with 1,000 Hours of Service per Year of Service. The months during which the Employee completes the specified Hours of Service (Choose one of a. or b.) :	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	a.	<input type="checkbox"/> Consecutive. Must be consecutive.						
	b.	<input type="checkbox"/> Not consecutive. Need not be consecutive.						

- (7) **Hours of Service within the time period following the Employee's Employment Commencement Date** (not exceeding 12 months for Elective Deferrals, Safe Harbor Contributions and SIMPLE Contributions and not exceeding 24 months for other contributions). If more than 12 months, 100% vesting is required. If the Employee does not complete the designated Hours of Service during the specified time period (if any), the Employee is subject to the one Year of Service (or two Years of Service if elect more than 12 months) requirement with 1,000 Hours of Service per Year of Service. **OR**

[Note: The Employer may complete the second blank in Election 14(b)(7) with "N/A" if the Employer wishes to impose an Hour of Service requirement without specifying a time period within which an Employee must complete the required Hours of Service.]

- (8) Describe eligibility conditions:

[Note: The Employer may use Election 14(b)(8) to describe different eligibility conditions as to different Contribution Types or Employee groups (e.g., As to all Contribution Types, no eligibility requirements for Division A Employees and one Year of Service as to Division B Employees). The Employer also may elect different ages for different Contribution Types and/or to specify different months or Hours of Service requirements under Elections 14(b)(5), (b)(6), or (b)(7) as to different Contribution Types. Any election must satisfy Code §410(a).]

15. **SPECIAL ELIGIBILITY EFFECTIVE DATE (DUAL ELIGIBILITY) (2.01(E))** . The eligibility conditions of Election 14 (Choose (a) or choose (b) and (c) as applicable) :

- (a) **No exceptions.** Apply to all Employees.

[Note: Elections 15(b) or (c) may trigger a coverage failure under Code §410(b).]

- (b) **Waiver of eligibility conditions for certain Employees.** For all Contribution Types, apply solely to an Eligible Employee employed or reemployed by the Employer after (specify date) . If the Eligible Employee was employed or reemployed by the Employer by the specified date, the Employee will become a Participant on the latest of: (i) the Effective Date; (ii) the restated Effective Date; (iii) the Employee's Employment Commencement Date or Re-Employment Commencement Date; or (iv) on the date the Employee attains age (not exceeding age 21) .

[Note: If the Employer does not wish to impose an age condition under clause (iv) as part of the requirements for the eligibility conditions waiver, leave the age blank.]

- (c) **Describe special eligibility Effective Date(s):**

[Note: Under Election 15(c), the Employer may describe special eligibility Effective Dates as to a Participant group and/or Contribution Type (e.g., Eligibility conditions apply only as to Nonelective Contributions and solely as to the Eligible Employees of Division B who were hired or reemployed by the Employer after January 1, 2007).]

16. **YEAR OF SERVICE — ELIGIBILITY (2.02(A))** . (Choose (a), (b), and (c) as applicable) :

[Note: If the Employer under Election 14 elects a one or two Year(s) of Service condition (including any requirement which defaults to such conditions under Elections 14(b)(6), (7), and (8)) or elects to apply a Year of Service for eligibility under any other Adoption Agreement election, the Employer should complete Election 16. The Employer should not complete Election 16 if it elects the Elapsed Time Method for eligibility.]

- (a) **Year of Service.** An Employee must complete 1,000 Hour(s) of Service during the relevant Eligibility Computation Period to receive credit for one Year of Service under Article II. [Note: The number may not exceed 1,000. If left blank, the requirement is 1,000 Hours of Service. Under Elections 14(b)(6) and (b)(7) and under Election 14(b)(8) if it incorporates Elections 14(b)(6) or (7), the number is 1,000 and the Employer should not supply any other number in the blank.]

- (b) **Subsequent Eligibility Computation Periods.** After the Initial Eligibility Computation Period described in Section 2.02(C)(2), the Plan measures Subsequent Eligibility Computation Periods as (Choose one of (1), (2), or (3)) :

- (1) **Plan Year.** The Plan Year beginning with the Plan Year which includes the first anniversary of the Employee's Employment Commencement Date.
- (2) **Anniversary Year.** The Anniversary Year, beginning with the Employee's second Anniversary Year.
- (3) **Split.** The Plan Year as described in Election 16(b)(1) as to: (describe Contribution Type(s)) and the Anniversary Year as described in Election 16(b)(2) as to: (describe Contribution Type(s)) .

[Note: To maximize delayed entry under a two Years of Service condition for Nonelective Contributions or Matching Contributions, the Employer should elect to remain on the Anniversary Year for such contributions.]

- (c) **Describe:** (e.g., Anniversary Year as to Division A and Plan Year as to Division B.)

17. **ENTRY DATE (2.02(D))** . Entry Date means the Effective Date and (Choose one or more of (a) through (f) as applicable) :

[Note: For this Election 17, unless described otherwise in Election 17(f), Elective Deferrals includes Pre-Tax Deferrals, Roth Elective Deferrals and Employee Contributions, Matching includes all Matching Contributions (except Operational QMACs under Section 3.03(C)(2)) and Nonelective includes all Nonelective Contributions (except Operational QNECs under Section 3.04(C)(2)). Entry as to Prevailing Wage Contributions is on the Employment Commencement Date unless the Prevailing Wage Contract provides otherwise. See Section 2.02(D).]

			(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonelective
(a)	<input type="checkbox"/>	Semi-annual. The first day of the first month and of the seventh month of the Plan Year.	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b)	<input type="checkbox"/>	First day of Plan Year	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c)	<input type="checkbox"/>	First day of each Plan Year quarter	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d)	<input type="checkbox"/>	The first day of each month	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e)	<input checked="" type="checkbox"/>	Immediate. Upon Employment Commencement Date or if later, upon satisfaction of eligibility conditions.	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(f)	<input type="checkbox"/>	Describe Entry Date(s):					

[Note: Under Election 17(f), the Employer may describe Entry Dates from the elections available under Elections 17(a) through (e), or a combination thereof as to a Participant group and/or Contribution Type or may elect additional Entry Dates (e.g., As to Matching Contributions excluding Additional Matching, immediate as to Division A Employees and semi-annual as to Division B Employees OR the earlier of the Plan's semi-annual Entry Dates or the entry dates under the Employer's medical plan).]

18. **PROSPECTIVE/RETROACTIVE ENTRY DATE (2.02(D))** . An Employee after satisfying the eligibility conditions in Election 14 will become a Participant (unless an Excluded Employee under Election 8) on the Entry Date (if employed on that date) (Choose one or more of (a) through (f) as applicable) :

[Note: Unless otherwise excluded under Election 8, an Employee who remains employed by the Employer on the relevant date must become a Participant by the earlier of: (i) the first day of the Plan Year beginning after the date the Employee completes the age and service requirements of Code §410(a); or (ii) 6 months after the date the Employee completes those requirements. For this Election 18, unless described otherwise in Election 18(f), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals and Employee Contributions, Matching includes all Matching Contributions (except Operational QMACs under Section 3.03(C)(2)) and Nonelective includes all Nonelective Contributions, (except Operational QNECs under Section 3.04(C)(2)).]

			(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonelective
(a)	<input type="checkbox"/>	Immediately following or coincident with the date the Employee completes the eligibility conditions.	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b)	<input type="checkbox"/>	Immediately following the date the Employee completes the eligibility conditions.	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c)	<input type="checkbox"/>	Immediately preceding or coincident with the date the Employee completes the eligibility conditions.	N/A		N/A	<input type="checkbox"/>	<input type="checkbox"/>
(d)	<input type="checkbox"/>	Immediately preceding the date the Employee completes the eligibility conditions.	N/A		N/A	<input type="checkbox"/>	<input type="checkbox"/>
(e)	<input type="checkbox"/>	Nearest the date the Employee completes the eligibility conditions.	N/A		N/A	<input type="checkbox"/>	<input type="checkbox"/>
(f)	<input type="checkbox"/>	Describe retroactive/prospective entry relative to Entry Date:					

[Note: Under Election 18(f), the Employer may describe the timing of entry relative to an Entry Date from the elections available under Elections 18(a) through (e), or a combination thereof as to a Participant group and/or Contribution Type (e.g., As to Matching Contributions excluding Additional Matching nearest as to Division A Employees and immediately following as to Division B Employees).]

19. **BREAK IN SERVICE — PARTICIPATION (2.03)** . The one year hold-out rule described in Section 2.03(C) (Choose one of (a), (b), or (c)) :

- (a) **Does not apply.**
- (b) **Applies.** Applies to the Plan and to all Participants.
- (c) **Limited application.** Applies to the Plan, but only to a Participant who has incurred a Severance from Employment.

[Note: The Plan does not apply the rule of parity under Code §410(a)(5)(D) unless the Employer in Appendix B specifies otherwise. See Section 2.03(D).]

**ARTICLE III
PLAN CONTRIBUTIONS AND FORFEITURES**

20. **ELECTIVE DEFERRAL LIMITATIONS (3.02(A))** . The following limitations apply to Elective Deferrals under Elections 6(a) and 6(b), which are in addition to those limitations imposed under the basic plan document (Choose (a) or choose (b) and (c) as applicable) :

- (a) **None.** No additional Plan imposed limits.

[Note: The Employer under Election 20 may not impose a lower deferral limit applicable only to Catch-Up Eligible Participants and the Employer's elections must be nondiscriminatory. The elected limits apply to Pre-Tax Deferrals and to Roth Deferrals unless described otherwise. Under a safe harbor plan: (i) NHCEs must be able to defer enough to receive the maximum Safe Harbor Matching and Additional Matching Contribution under the plan and must be permitted to defer any lesser amount; and (ii) the Employer may limit Elective Deferrals to a whole percentage of Compensation or to a whole dollar amount. See Section 1.54(C) as to administrative limitations on Elective Deferrals.]

- (b) **Additional Plan limit(s).** (Choose (1) and (2) as applicable. Complete (3) if (1) or (2) is chosen) :

- (1) **Maximum deferral amount.** A Participant's Elective Deferrals may not exceed: 50% (specify dollar amount or percentage of Compensation).

- (2) **Minimum deferral amount.** A Participant's Elective Deferrals may not be less than: 1% (specify dollar amount or percentage of Compensation).

- (3) **Application of limitations.** The Election 20(b)(1) and (2) limitations apply based on Elective Deferral Compensation described in Elections 9 — 11. If the Employer elects Plan Year/Participation Compensation under column (1) and in Election 10 elects Participating Compensation, in the Plan Years commencing after an Employee becomes a Participant, apply the elected minimum or maximum limitations to the Plan Year. Apply the elected limitation based on such Compensation during the designated time period and only to HCEs as elected below. (Choose a. or choose b. and c. as applicable. Under each of a., b. or c. choose one of (1) or (2). Choose (3) if applicable) :

		(1) Plan Year/Participating Compensation	(2) Payroll period	(3) HCEs only
a.	<input checked="" type="checkbox"/> Both. Both limits under Elections 20(b)(1) and (2).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	<input type="checkbox"/> Maximum limit. The maximum amount limit under Election 20(b)(1).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	<input type="checkbox"/> Minimum limit. The minimum amount limit under Election 20(b)(2).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- (c) **Describe Elective Deferral limitation(s):**

[Note: Under Election 20(c), the Employer: (i) may describe limitations on Elective Deferrals from the elections available under Elections 20(a) and (b) or a combination thereof as to a Participant group (e.g., No limit applies to Division A Employees. Division B Employees may not defer in excess of 10% of Plan Year Compensation); (ii) may elect a different time period to which the limitations apply; and/or (iii) may apply a different limitation to Pre-Tax Deferrals and to Roth Deferrals.]

21. AUTOMATIC DEFERRAL (3.02(B)). The Automatic Deferral provisions of Section 3.02(B) (Choose one of (a) or (b)) :

- (a) **Do not apply.**
- (b) **Apply.** The Automatic Deferral Effective Date is: (specify date) . (Complete (1), (2), and (3). Choose (4) as applicable) :
 - (1) **Automatic Deferral Amount.** The Employer, as to each Participant affected, will withhold as the Automatic Deferral Amount, % from the Participant’s Compensation each payroll period unless the Participant makes a Contrary Election.
 - (2) **Participants affected.** The Automatic Deferral applies to (Choose one of a., b., c., or d.) :
 - a. **All Participants.** All Participants, regardless of any prior Salary Reduction Agreement, unless and until they make a Contrary Election after the Automatic Deferral Effective Date.
 - b. **Election of at least Automatic Deferral Amount.** All Participants, except those who have in effect a Salary Reduction Agreement on the Automatic Deferral Effective Date provided that the Elective Deferral amount under the Agreement is at least equal to the Automatic Deferral Amount.
 - c. **No existing Salary Reduction Agreement.** All Participants, except those who have in effect a Salary Reduction Agreement on the Automatic Deferral Effective Date regardless of the Elective Deferral amount under the Agreement.
 - d. **New Participants.** Each Employee whose Entry Date is on or following the Automatic Deferral Effective Date.
 - (3) **Scheduled increases.** The Automatic Deferral Amount will or will not increase (as a percentage of Compensation) in Plan Years following the Plan Year containing the Automatic Deferral Effective Date (or, if later, the Plan Year in which the Automatic Deferral first applies to a Participant) as follows (Choose one of a., b., or c.) :
 - a. **No scheduled increase.** The Automatic Deferral Amount applies in all Plan Years.
 - b. **Scheduled increase.** The Automatic Deferral Amount will increase as follows:

Plan Year of application to a Participant	Automatic Deferral Amount
1	3%
2	3%
3	4%
4	5%
5 and thereafter	6%

- c. **Other scheduled increase.** The Automatic Deferral Amount will increase as follows:

Plan Year of application to a Participant	Automatic Deferral Amount
	%
	%
	%
	%

- (4) **Describe Automatic Deferral:**

[Note: Under Election 21(b)(4), the Employer may describe Automatic Deferral provisions from the elections available under Election 21 and/or a combination thereof as to a Participant group (e.g., Automatic Deferrals do not apply to Division A Employees. All Division B Employee/Participants are subject to an Automatic Deferral Amount equal to 3% of Compensation effective as of January 1, 2008).]

22. CODA (3.02(C)). The CODA provisions of Section 3.02(C) (Choose one of (a) or (b)) :

- (a) **Do not apply.**
- (b) **Apply.** For each Plan Year for which the Employer makes a designated CODA contribution under Section 3.02(C), a Participant may elect to receive directly in cash not more than the following portion (or, if less, the Elective Deferral Limit) of his/her proportionate share of that CODA contribution (Choose one of (1) or (2)) :
 - (1) **All or any portion.**
 - (2) ____%

23. CATCH-UP DEFERRALS (3.02(D)). A Catch-Up Eligible Participant (Choose one of (a) or (b)) :

- (a) **Permitted.** May make Catch-Up Deferrals to the Plan.
- (b) **Not Permitted.** May not make Catch-Up Deferrals to the Plan.

24. **MATCHING CONTRIBUTIONS (EXCLUDING SAFE HARBOR MATCH AND ADDITIONAL MATCH UNDER SECTION 3.05) (3.03(A))**. The Employer Matching Contributions under Election 6(c) are subject to the following additional elections regarding type (discretionary/fixed), rate/amount, limitations and time period (collectively, such elections are "the matching formula") and the allocation of Matching Contributions is subject to Section 3.06 except as otherwise provided (Choose one or more of (a) through (g) as applicable; then, for the elected match, complete (1), (2), and/or (3) as applicable. If the Employer completes (2) or (3), also complete one of (4), (5), or (6)):

[Note: If the Employer wishes to make any Matching Contributions that satisfy the ADP or ACP safe harbor, the Employer should make these Elections under Election 30, and not under this Election 24.]

		(1) Match Rate/Amt [\$/% of Elective Deferrals]	(2) Limit on Deferrals Matched [\$/% of Compensation]	(3) Limit on Match Amount [\$/% of Compensation]	(4) Apply limit(s) per Plan Year ["true-up"]	(5) Apply limit(s) per payroll period [no "true-up"]	(6) Apply limit(s) per designated time period [no "true- up"]
(a)	<input type="checkbox"/> Discretionary – see Section 1.34(B) (The Employer may, but is not required to complete (a)(1)-(6). See the "Note" following Election 24.)				<input type="checkbox"/>	<input type="checkbox"/>	
(b)	<input checked="" type="checkbox"/> Fixed – uniform rate/amount	50%	6%		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(c)	<input type="checkbox"/> Fixed – tiered				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Elective Deferral %	Matching Rate				
		____%	____%				
		____%	____%				
		____%	____%				
(d)	<input type="checkbox"/> Fixed –Years of Service				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Years of Service	Matching Rate				
		____	____%				
		____	____%				
		____	____%				
		____	____%				
(1)	"Years of Service" under this Election 24(d) means (Choose one of a. or b.):						
	a. <input type="checkbox"/> Eligibility . Years of Service for eligibility in Election 16.						
	b. <input type="checkbox"/> Vesting . Years of Service for vesting in Elections 42 and 43.						
(e)	<input type="checkbox"/> Fixed – multiple formulas				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Formula 1: _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Formula 2: _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Formula 3: _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- (f) **Related and Participating Employers**. If any Related and Participating Employers contribute Matching Contributions to the Plan, the following apply (Complete (1) and (2)):
- (1) Matching formula. The matching formula for the Participating Employer(s) (Choose one of a. or b.):
- a. **All the same**. Is (are) the same as for the Signatory Employer under this Election 24.
 - b. **At least one different**. Is (are) as follows: _____.
- (2) Allocation sharing. The Plan Administrator will allocate the Matching Contributions made by the Signatory Employer and by any Participating Employer (Choose one of a. or b.):
- a. **Employer by Employer**. Only to the Participants directly employed by the contributing Employer.
 - b. **Across Employer lines**. To all Participants regardless of which Employer directly employs them and regardless of whether their direct Employer made Matching Contributions for the Plan Year.

[Note: The Employer should not elect 24(f) unless there are Related Employers which are also Participating Employers. See Section 1.23(D).]

- (g) **Describe:** _____ (e.g., A Discretionary Matching Contribution applies to Division A Participants. A Fixed Matching Contribution equal to 50% of Elective Deferrals not exceeding 6% of Plan Year Compensation applies to Division B Participants.)

[Note: See Section 1.34(A) as to Fixed Matching Contributions. A Participant's Elective Deferral percentage is equal to the Participant's Elective Deferrals divided by his/her Compensation. The matching rate/amount is the specified rate/amount of match for the corresponding Elective Deferral amount/percentage. Any Matching Contributions apply to Pre-Tax Deferrals and to Roth Deferrals unless described otherwise in Election 24(g). Matching Contributions for nondiscrimination testing purposes are subject to the targeting limitations. See Section 4.10(D). The Employer under Election 24(a) in its discretion may determine the amount of a Discretionary Matching Contribution and the matching contribution formula. Alternatively, the Employer in Election 24(a) may specify the Discretionary Matching Contribution formula.]

25. **QMAC (PLAN-DESIGNATED) (3.03(C)(1)).** The following provisions apply regarding Plan-Designated QMACs (Choose one of (a) or (b)) :

[Note: Regardless of its elections under this Election 25, the Employer under Section 3.03(C)(2) may elect for any Plan Year where the Plan is using Current Year Testing to make Operational QMACs which the Plan Administrator will allocate only to NHCEs for purposes of correction of an ADP or ACP test failure.]

- (a) **Not applicable.** There are no Plan-Designated QMACs.
- (b) **Applies.** There are Plan-Designated QMACs to which the following provisions apply (Complete (1) and (2)) :
- (1) **Matching Contributions affected.** The following Matching Contributions (as allocated to the designated allocation group under Election 25(b)(2)) are Plan-Designated QMACs (Choose one of a. or b.) :
- All.** All Matching Contributions.
 - Designated.** Only the following Matching Contributions under Election 24: .
- (2) **Allocation Group.** Subject to Section 3.06, allocate the Plan-Designated QMAC (Choose one of a. or b.) :
- NHCEs only.** Only to NHCEs who make Elective Deferrals subject to the Plan-Designated QMAC.
 - All Participants.** To all Participants who make Elective Deferrals subject to the Plan-Designated QMAC.

The Plan Administrator will allocate all other Matching Contributions as Regular Matching Contributions under Section 3.03(B), except as provided in Sections 3.03(C)(2) or 3.05.

[Note: See Section 4.10(D) as to targeting limitations applicable to QMAC nondiscrimination testing.]

26. **MATCHING CATCH-UP DEFERRALS (3.03(D)).** If a Participant makes a Catch-Up Deferral, the Employer (Choose one of (a) or (b)) :

- (a) **Match.** Will apply to the Catch-Up Deferral (Choose one of (1) or (2)) :
- All.** All Matching Contributions.
 - Designated.** The following Matching Contributions in Election 24: .
- (b) **No Match.** Will not match any Catch-Up Deferrals.

[Note: Election 26 does not apply to a safe harbor 401(k) plan unless the Employer will apply the ACP test. See Elections 37(a)(2)b. and 37(a)(2)c.(ii). In this case, Election 26 applies only to Additional Matching, if any. A safe harbor 401(k) Plan will apply the Basic Match or Enhanced Match to Catch-Up Deferrals. If the Employer elects to apply the ACP test safe harbor under Election 37(a)(2)a. or 37(a)(2)c.(i), Election 26 does not apply and the Plan also will apply any Additional Match to Catch-Up Deferrals.]

27. **NONELECTIVE CONTRIBUTIONS (TYPE/AMOUNT) INCLUDING PREVAILING WAGE CONTRIBUTIONS (3.04(A)).** The Employer Nonelective Contributions under Election 6(d) are subject to the following additional elections as to type and amount (Choose one or more of (a) through (e) as applicable) :

- (a) **Discretionary.** An amount the Employer in its sole discretion may determine.
- (b) **Fixed.** (Choose one or more of (1), (2), and (3) as applicable) :
- Uniform %.** _____% of each Participant's Compensation, per _____ (e.g., Plan Year, month).
 - Fixed dollar amount.** \$ _____, per _____ (e.g., Plan Year, month, HOS, per Participant per month).
 - Describe:** _____ (specify time period, e.g., per Plan Year quarter. If not specified, the time period is the Plan Year) .

[Note: The Employer under Election 27(b)(3) may specify any Fixed Nonelective Contribution formula not described under Elections 27(b)(1) or (2) (e.g., For each Plan Year, 2% of net profits exceeding \$50,000) and/or the Employer may describe different Fixed Nonelective Contributions as applicable to different Participant groups (e.g., A Fixed Nonelective Contribution equal to 5% of Plan Year Compensation applies to Division A Participants and a Fixed Nonelective Contribution equal to \$500 per Participant each Plan Year applies to Division B Participants) .]

- (c) **Prevailing Wage Contribution.** The Prevailing Wage Contribution amount(s) specified for the Plan Year or other applicable period in the Employer's Prevailing Wage Contract(s). The Employer will make a Prevailing Wage Contribution only to Participants covered by the Contract and only as to Compensation paid under the Contract. If the Participant accrues an allocation of Employer Contributions (including forfeitures) under the Plan or any other Employer plan in addition to the Prevailing Wage Contribution, the Plan Administrator will *(Choose one of (1) or (2))* :
- (1) **No offset.** Not reduce the Participant's Employer Contribution allocation by the amount of the Prevailing Wage Contribution.
- (2) **Offset.** Reduce the Participant's Employer Contribution allocation by the amount of the Prevailing Wage Contribution.
- (d) **Related and Participating Employers.** If any Related and Participating Employers contribute Nonelective Contributions to the Plan, the contribution formula(s) *(Choose one of (1) or (2))* :
- (1) **All the same.** Is (are) the same as for the Signatory Employer under this Election 27.
- (2) **At least one different.** Is (are) as follows: .

[Note: The Employer should not elect 27(d) unless there are Related Employers which are also Participating Employers. See Section 1.23(D). The Employer electing 27(d) also must complete Election 28(g) as to the allocation methods which apply to the Participating Employers.]

- (e) **Describe:** _____

[Note: Under Election 27(e), the Employer may describe the amount and type of Nonelective Contributions from the elections available under Election 27 and/or a combination thereof as to a Participant group (e.g., A Discretionary Nonelective Contribution applies to Division A Employees. A Fixed Nonelective Contribution equal to 5% of Plan Year Compensation applies to Division B Employees).]

28. **Nonelective Contribution Allocation (3.04(B)).** The Plan Administrator, subject to Section 3.06, will allocate to each Participant any Nonelective Contribution (excluding QNECs) under the following contribution allocation formula *(Choose one or more of (a) through (h) as applicable)* :

- (a) **Pro rata.** As a uniform percentage of Participant Compensation.
- (b) **Permitted disparity.** In accordance with the permitted disparity allocation provisions of Section 3.04(B)(2), under which the following permitted disparity formula and definition of "Excess Compensation" apply *(Complete (1) and (2))* :
- (1) **Formula** *(Choose one of a. or b.)* :
- a. **Two-tiered.**
- b. **Four-tiered.**
- (2) **Excess Compensation.** For purposes of Section 3.04(B)(2), "Excess Compensation" means Compensation in excess of *(Choose one of a. or b.)* :
- a. **Percentage amount.** _____% *(not exceeding 100%)* of the taxable wage base in effect on the first day of the Plan Year, rounded to the next highest \$ _____ *(not exceeding the taxable wage base).*
- b. **Dollar amount.** The following amount: \$ _____ *(not exceeding the taxable wage base in effect on the first day of the Plan Year).*
- (c) **Incorporation of contribution formula.** The Plan Administrator will allocate any Fixed Nonelective Contribution under Elections 27(b), 27(d), or 27(e), or any Prevailing Wage Contribution under Election 27(c), in accordance with the contribution formula the Employer adopts under those Elections.
- (d) **Classifications of Participants.** In accordance with the classifications allocation provisions of Section 3.04(B)(3). The classifications are *(Choose one of (1), (2), or (3))* :

[Note: Typically, the Employer would elect 28(d) where it intends to satisfy nondiscrimination requirements using "cross-testing" under Treas. Reg. §1.401(a)(4)-8. However, choosing this election does not necessarily require application of cross-testing and the Plan may be able to satisfy nondiscrimination as to its classification-based allocations by testing allocation rates.]

- (1) **Each in own classification.** Each Participant constitutes a separate classification.
- (2) **NHCEs/HCEs.** Nonhighly Compensated Employee/Participants and Highly Compensated Employee/Participants.
- (3) **Describe the classifications:** _____

[Note: Any classifications under Election 28(d) must result in a definitely determinable allocation under Treas. Reg. §1.401-1(b)(1)(ii) and must constitute a reasonable classification within the meaning of Treas. Reg. §1.410(b)-4(b). The number of allocation rates is subject to the limitations in Section 3.04(B)(3)(b). Standard interest and mortality assumptions under Treas. Reg. §1.401(a)(4)-12 apply. In the case of a self-employed Participant, the requirements of Treas. Reg. §1.401(k)-1(a)(6) apply and the allocation method should not result in a cash or deferred election for the self-employed Participant. The Employer by the due date of its tax return (including extensions) must advise the Plan Administrator or Trustee in writing as to the allocation rate applicable to each Participant under Election 28(d)(1) or applicable to each classification under Elections 28(d)(2) or (3) for the allocation Plan Year. Under Election 28(d)(1), the Employer may decide from year to year the classification (allocation rate) applicable to each Participant, without the need to amend the Plan to change the classification.]

- (e) **Age-based.** In accordance with the age-based allocation provisions of Section 3.04(B)(5). The Plan Administrator will use the Actuarial Factors based on the following assumptions (Complete both (1) and (2)) :
- (1) **Interest rate.** (Choose one of a., b., or c.) :
a. 7.5% b. 8.0% c. 8.5%
- (2) **Mortality table.** (Choose one of a. or b.) :
a. **UP-1984.** See Appendix D.
b. **Alternative:** (Specify 1983 GAM, 1983 IAM, 1971 GAM or 1971 IAM and attach applicable tables using such mortality table and the specified interest rate as replacement Appendix D.)
- (f) **Uniform points.** In accordance with the uniform points allocation provisions of Section 3.04(B)(6). Under the uniform points allocation formula, a Participant receives (Choose one or both of (1) and (2). Choose (3) if applicable) :
- (1) **Years of Service.** point(s) for each Year of Service. The maximum number of Years of Service counted for points is .
“Year of Service” under this Election 28(f) means (Choose one of a. or b.) :
a. **Eligibility.** Years of Service for eligibility in Election 16.
b. **Vesting.** Years of Service for vesting in Elections 42 and 43.
[Note: A Year of Service must satisfy Treas. Reg. §1.401(a)(4)-11(d)(3) for the uniform points allocation to qualify as a safe harbor allocation under Treas. Reg. §1.401(a)(4)-2(b)(3).]
- (2) **Age.** point(s) for each year of age attained during the Plan Year.
- (3) **Compensation.** point(s) for each \$ (not to exceed \$200) increment of Plan Year Compensation.
- (g) **Related and Participating Employers.** If any Related and Participating Employers contribute Nonelective Contributions to the Plan, the Plan Administrator will allocate the Nonelective Contributions made by the Participating Employer(s) under Election 27(d) (Complete (1) and (2)) :
- (1) **Allocation Method.** (Choose one of a. or b.) :
a. **All the same.** Using the same allocation method as applies to the Signatory Employer under this Election 28.
b. **At least one different.** Under the following allocation method(s):
- (2) **Allocation sharing.** The Plan Administrator will allocate the Nonelective Contributions made by the Signatory Employer and by any Participating Employer (Choose one of a. or b.) :
a. **Employer by Employer.** Only to the Participants directly employed by the contributing Employer.
b. **Across Employer lines.** To all Participants regardless of which Employer directly employs them and regardless of whether their direct Employer made Nonelective Contributions for the Plan Year.

[Note: The Employer should not elect 28(g) unless there are Related Employers which are also Participating Employers. See Section 1.23(D) and Election 27(d). If the Employer elects 28(g)(2)a., the Employer should also elect 11(b)(8)b., to disregard the Compensation paid by “Y” Participating Employer in determining the allocation of the “X” Participating Employer contribution to a Participant (and vice versa) who receives Compensation from both X and Y. If the Employer elects 28(g)(2)b., the Employer should not elect 11(b)(8)b. Election 28(g)(2)a. does not apply to Safe Harbor Nonelective Contributions.]

- (h) **Describe:** _____
Pro rata as to Division A Participants and Permitted Disparity (two-tiered at 100% of the SSTWB) as to Division B Participants.)
(e.g.,

29. QNEC (PLAN-DESIGNATED) (3.04(C)(1)). The following provisions apply regarding Plan-Designated QNECs (Choose one of (a) or (b)) :

[Note: Regardless of its elections under this Election 29, the Employer under Section 3.04(C)(2) may elect for any Plan Year where the Plan is using Current Year Testing to make Operational QNECs which the Plan Administrator will allocate only to NHCEs for purposes of correction of an ADP or ACP test failure .]

(a) **Not applicable.** There are no Plan-Designated QNECs.

(b) **Applies.** There are Plan-Designated QNECs to which the following provisions apply (Complete (1), (2), and (3)) :

- (1) **Nonelective Contributions affected.** The following Nonelective Contributions (as allocated to the designated allocation group under Election 29(b)(2)) are Plan-Designated QNECs (Choose one of a. or b.) :
- a. **All.** All Nonelective Contributions.
- b. **Designated.** Only the following Nonelective Contributions under Election 27: _____.
- (2) **Allocation Group.** Subject to Section 3.06, allocate the Plan-Designated QNEC (Choose one of a. or b.) :
- a. **NHCEs only.** Only to NHCEs under the method elected in Election 29(b)(3).
- b. **All Participants.** To all Participants under the method elected in Election 29(b)(3).
- (3) **Allocation Method.** The Plan Administrator will allocate a Plan-Designated QNEC using the following method (Choose one of a., b., c., or d.) :
- a. **Pro rata.**
- b. **Flat dollar.**
- c. **Reverse.** See Section 3.04(C)(3).
- d. **Describe:** _____

[Note: Any allocation method the Employer elects under Election 29(b)(3)d. must be definitely determinable. See Section 4.10(D) as to targeting limitations applicable to QNEC nondiscrimination testing.]

30. SAFE HARBOR 401(k) PLAN (SAFE HARBOR CONTRIBUTIONS/ADDITIONAL MATCHING CONTRIBUTIONS) (3.05). The Employer under Election 6(e) will (or in the case of the Safe Harbor Nonelective Contribution may) contribute the following Safe Harbor Contributions described in Section 3.05(E) and will or may contribute Additional Matching Contributions described in Section 3.05(F) (Choose one of (a), (b), (c), or (d) when and as applicable. Complete (e) and (h). Choose (f), (g), and (i) as applicable) :

(a) **Safe Harbor Nonelective Contribution.** The Safe Harbor Nonelective Contribution equals _____ % of a Participant's Compensation [Note: The amount in the blank must be at least 3% . The Safe Harbor Nonelective Contribution applies toward (offsets) most other Employer Nonelective Contributions. See Section 3.05(E)(1).]

(b) **Safe Harbor Nonelective Contribution/delayed year-by-year election (maybe and supplemental notices).** In connection with the Employer's provision of the maybe notice under Section 3.05(I)(1), the Employer elects into safe harbor status by giving the supplemental notice and by making this Election 30(b) to provide for a Safe Harbor Nonelective Contribution equal to _____ % (specify amount at least equal to 3%) of a Participant's Compensation. This Election 30(b) and safe harbor status applies for the Plan Year ending: _____ (specify Plan Year end), which is the Plan Year to which the Employer's maybe and supplemental notices apply.

[Note: If the Employer makes a delayed election into safe harbor status under Section 3.05(I)(1), the Employer must amend the Plan to provide for a Safe Harbor Nonelective Contribution equal to at least 3% of each Participant's Compensation. The Employer may make this amendment by substitute Adoption Agreement page (electing Election 30(b)) or by another form of amendment under Section 11.02(B). An Employer using the maybe notice should not elect a Safe Harbor Nonelective Contribution under Election 30(a) unless the Employer intends to continue safe harbor status under this election in the subsequent Plan Year. By making its amendment into safe harbor status under Election 30(b), the Employer avoids the need to further amend the Plan if the Employer is not certain that it will apply the safe harbor in the subsequent Plan Year. By contrast, an Employer which gave the maybe notice and has decided to make the Safe Harbor Nonelective Contribution for that year and for future years should use Election 30(a). The Employer only elects 30(a) and should not elect 30(b) if prior to the Plan Year the Employer unequivocally decides to elect safe harbor status for the Plan Year and provides a safe harbor notice consistent with this election rather than giving the maybe notice. If the Employer gives the maybe notice and the Employer will or may make Matching Contributions, the Employer should elect Additional Matching under Election 30(h) (and should not elect Matching Contributions under Election 24) if it wishes to avoid ACP testing.]

(c) **Basic Matching Contribution.** A Matching Contribution equal to 100% of each Participant’s Elective Deferrals not exceeding 3% of the Participant’s Compensation, plus 50% of each Participant’s Elective Deferrals in excess of 3% but not in excess of 5% of the Participant’s Compensation. See Sections 1.34(E) and 3.05(E)(4). (Complete (1)) :

(1) **Time period.** For purposes of this Election 30(c), “Compensation” and “Elective Deferrals” mean Compensation and Elective Deferrals for: . _____ [Note: The Employer must complete the blank line with the applicable time period for computing the Basic Match, such as “each payroll period,” “each calendar month,” “each Plan Year quarter” or “the Plan Year.”]

(d) **Enhanced Matching Contribution.** See Sections 1.34(F) and 3.05(E)(5). (Choose one of (1) or (2) and complete (3) for any election) :

(1) **Uniform percentage.** A Matching Contribution equal to _____% of each Participant’s Elective Deferrals but not as to Elective Deferrals exceeding _____% of the Participant’s Compensation.

(2) **Tiered formula.** A Matching Contribution equal to the specified matching rate for the corresponding level of each Participant’s Elective Deferral percentage. A Participant’s Elective Deferral percentage is equal to the Participant’s Elective Deferrals divided by his/her Compensation.

Elective Deferral Percentage	Matching Rate
_____ %	_____ %
_____ %	_____ %
_____ %	_____ %

(3) **Time period.** For purposes of this Election 30(d), “Compensation” and “Elective Deferrals” mean Compensation and Elective Deferrals for: . [Note: The Employer must complete the blank line with the applicable time period for computing the Enhanced Match, such as “each payroll period,” “each calendar month,” “each Plan Year quarter” or “the Plan Year.”]

[Note: The matching rate may not increase as the Elective Deferral percentage increases and the Enhanced Matching formula otherwise must satisfy the requirements of Code §§401(k)(12)(B)(ii) and (iii). If the Employer elects to satisfy the ACP safe harbor under Election 37(a)(2)a., the Employer also must limit Elective Deferrals taken into account for the Enhanced Matching Contribution to a maximum of 6% of Plan Year Compensation.]

(e) **Participants who will receive Safe Harbor Contributions.** The allocation of Safe Harbor Contributions (Choose one of (1), (2), or (3)) :

(1) **Applies to all Participants.** Applies to all Participants except as may be limited under Election 30(f).

(2) **NHCEs only.** Is limited to NHCE Participants only and may be limited further under Election 30(f). No HCE will receive a Safe Harbor Contribution allocation.

(3) **NHCEs and designated HCEs.** Is limited to NHCE Participants and to the following HCE Participants and may be limited further under Election 30(f): .

[Note: Any HCE allocation group the Employer describes under Election 30(e)(3) must be definitely determinable. (e.g., Division “A” HCEs OR HCEs who own more than 5% of the Employer without regard to attribution rules) .]

(f) **Early Elective Deferrals/delay of Safe Harbor Contribution.** The Employer may elect this Election 30(f) only if the Employer in Election 14 elects eligibility requirements for Elective Deferrals of less than age 21 and one Year of Service but elects age 21 and one Year of Service for Safe Harbor Matching or for Safe Harbor Nonelective Contributions. The Employer under this Election 30(f) limits the allocation of any Safe Harbor Contribution under Election 30 for a Plan Year to those Participants: (i) who have attained age 21; (ii) who have completed one Year of Service; and (iii) who the Plan Administrator in applying the OEE rule described in Section 4.06(C), treats as benefiting in the disaggregated plan covering the Includible Employees. Those Participants in the Plan Year whom the Plan Administrator treats as Otherwise Excludable Employees will not receive any Safe Harbor Contribution allocation and the Plan Administrator will apply the ADP (and, as applicable the ACP) test(s) to the disaggregated plan benefiting the Otherwise Excludable Employees. If the Employer in Election 10(a)(2) has elected “Participating Compensation” for allocating Elective Deferrals, Nonelective Contributions or Matching Contributions (as relevant to the allocation under this Election 30 based on the Contribution Type), the Plan Administrator, in allocating the Safe Harbor Contribution for the Plan Year in which the Participant crosses over to the Includible Employees group, will count Compensation and Elective Deferrals only on and following the Cross-Over Date. See Section 3.05(D).

(g) **Another plan.** The Employer will make the Safe Harbor Contribution to the following plan: _____.

(h) **Additional Matching Contributions.** See Sections 1.34(G) and 3.05(F). (Choose one of (1) or (2)) :

(1) **No Additional Matching Contributions.** The Employer will not make any Additional Matching Contributions to its safe harbor Plan.

(2) **Additional Matching Contributions.** The Employer will or may make the following Additional Matching Contributions to its safe harbor Plan. (Choose a. and b. as applicable) :

a. **Fixed Additional Matching Contribution.** The following Fixed Additional Matching Contribution (Choose (i) and (ii) as applicable and complete (iii) for any election) :

(i) **Uniform percentage.** A Matching Contribution equal to _____ % of each Participant's Elective Deferrals but not as to Elective Deferrals exceeding _____ % of the Participant's Compensation.

(ii) **Tiered formula.** A Matching Contribution equal to the specified matching rate for the corresponding level of each Participant's Elective Deferral percentage. A Participant's Elective Deferral percentage is equal to the Participant's Elective Deferrals divided by his/her Compensation.

Elective Deferral Percentage	Matching Rate
_____ %	_____ %
_____ %	_____ %
_____ %	_____ %

(iii) **Time period.** For purposes of this Election 30(h)(2)a., "Compensation" and "Elective Deferrals" mean Compensation and Elective Deferrals for: _____. [Note: The Employer must complete the blank line with the applicable time period for computing the Additional Match, e.g., "each payroll period," "each calendar month," "each Plan Year quarter" OR "the Plan Year." If the Employer elects a match under both (i) and (ii) and will apply a different time period to each match, the Employer may indicate as such in the blank line.]

b. **Discretionary Additional Matching Contribution.** The Employer may make a Discretionary Additional Matching Contribution. If the Employer makes a Discretionary Matching Contribution, the Discretionary Matching Contribution will not apply as to Elective Deferrals exceeding _____ % of the Participant's Compensation (complete the blank if applicable or leave blank) .

[Note: If the Employer elects to satisfy the ACP safe harbor under Election 37(a)(2)a. or 37(a)(2)c.(i), then as to any and all Matching Contributions, including Fixed Additional Matching Contributions and Discretionary Additional Matching Contributions: (i) the matching rate may not increase as the Elective Deferral percentage increases; (ii) no HCE may be entitled to a greater rate of match than any NHCE; (iii) the Employer must limit Elective Deferrals taken into account for the Additional Matching Contributions to a maximum of 6% of Plan Year Compensation; (iv) the Plan must apply all Matching Contributions to Catch-Up Deferrals; and (v) in the case of a Discretionary Additional Matching Contribution, the contribution amount may not exceed 4% of the Participant's Plan Year Compensation.]

(i) **Multiple Safe Harbor Contributions in disaggregated Plan.** The Employer elects to make different Safe Harbor Contributions and/or Additional Matching Contributions to disaggregated parts of its Plan under Treas. Reg. §1.401(k)-1(b)(4) as follows: _____. (Specify contributions for disaggregated plans, e.g., as to Collectively Bargained Employees a 3% Nonelective Safe Harbor Contribution applies and as to non-Collectively Bargained Employees, the Basic Matching Contribution applies) .

31. **ALLOCATION CONDITIONS (3.06(B)/(C)).** The Plan does not apply any allocation conditions to: (i) Elective Deferrals; (ii) Safe Harbor Contributions; (iii) commencing as of the Final 401(k) Regulations Effective Date, Additional Matching Contributions which will satisfy the ACP test safe harbor; (iv) Employee Contributions; (v) Rollover Contributions; (vi) Designated IRA Contributions; (vii) SIMPLE Contributions; or (viii) Prevailing Wage Contributions, except as may be required by the Prevailing Wage Contract. To receive an allocation of Matching Contributions, Nonelective Contributions or Participant forfeitures, a Participant must satisfy the following allocation condition(s) (Choose one of (a) or (b). Choose (c) if applicable) :

(a) **No conditions.** No allocation conditions apply to Matching Contributions, to Nonelective Contributions or to forfeitures.

(b) The following allocation conditions apply to the designated Contribution Type and/or forfeitures (Choose one or more of (1) through (7) as applicable) :

Conditions.

[Note: For this Election 31, except as the Employer describes otherwise in Election 31(b)(7) or as provided in Sections 3.03(C)(2) and 3.04(C)(2) regarding Operational QMACs and Operational QNECs, Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions to which allocation conditions may apply. The Employer under Election 31(b)(7) may not impose an Hour of Service condition exceeding 1,000 Hours of Service in a Plan Year.]

			(1) Matching, Nonelective and Forfeitures		(2) Matching	(3) Nonelective	(4) Forfeitures
(1)	<input checked="" type="checkbox"/>	None.	N/A (See Election 31(a))		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	<input type="checkbox"/>	501 HOS/terminees (91 consecutive days if Elapsed Time). See Section 3.06(B)(1)(b).	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3)	<input checked="" type="checkbox"/>	Last day of the Plan Year.	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(4)	<input type="checkbox"/>	Last day of the Election 31(c) time period.	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5)	<input checked="" type="checkbox"/>	1,000 HOS in the Plan Year (182 consecutive days in Plan Year if Elapsed Time).	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(6)	<input type="checkbox"/>	_____ (specify) HOS within the Election 31(c) time period, (but not exceeding 1,000 HOS in a Plan Year).	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(7)	<input checked="" type="checkbox"/>	Describe conditions: No conditions apply for purposes of Nonelective Contributions for those participants who die or become disabled (and such disability is determined to meet the definition of Disability) while performing Qualified Military Service. <u>_____</u> <i>(e.g., Last day of the Plan Year as to Nonelective Contributions for Participating Employer "A" Participants. No allocation conditions for Participating Employer "B" Participants).</i>					
(c)	<input type="checkbox"/>	Time period. Under Section 3.06(C), apply Elections 31(b)(4), (b)(6) or (b)(7) to the specified contributions/forfeitures based on each (Choose one of (1) through (5)) :					
(1)	<input type="checkbox"/>	Plan Year	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	<input type="checkbox"/>	Plan Year quarter	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3)	<input type="checkbox"/>	Calendar month	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4)	<input type="checkbox"/>	Payroll period	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5)	<input type="checkbox"/>	Describe time period: _____					

[Note: If the Employer elects 31(b)(4) or (b)(6), the Employer must choose (c). If the Employer elects 31(b)(7), choose (c) if applicable.]

32. ALLOCATION CONDITIONS – APPLICATION/WAIVER/SUSPENSION (3.06(D))(F) . Under Section 3.06(D), in the event of Severance from Employment as described below, apply or do not apply Election 31(b) allocation conditions to the specified contributions/forfeitures as follows (If the Employer elects 31(b), the Employer must complete Election 32. Choose one of (a) or (b). Complete (c)) :

[Note: For this Election 32, except as the Employer describes otherwise in Election 31(b)(7) or as provided in Sections 3.03(C)(2) and 3.04(C)(2) regarding Operational QMACs and Operational QNECs, Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions to which allocation conditions may apply.]

- (a) **Total waiver or application.** If a Participant incurs a Severance from Employment on account of or following death, Disability or attainment of Normal Retirement Age (Choose one of (1) or (2)) :
- (1) **Do not apply.** Do not apply elected allocation conditions to Matching Contributions, to Nonelective Contributions or to forfeitures.
 - (2) **Apply.** Apply elected allocation conditions to Matching Contributions, to Nonelective Contributions and to forfeitures.

		(1) Matching, Nonelective and Forfeitures	(2) Matching	(3) Nonelective	(4) Forfeitures
(b)	<input checked="" type="checkbox"/> Application/waiver as to Contribution Types events. If a Participant incurs a Severance from Employment, apply allocation conditions <i>except</i> such conditions are waived if Severance is on account of or following death, Disability or attainment of Normal Retirement Age as specified, and as applied to the specified Contribution Types/forfeitures (Choose (1), (2), and (3) as applicable) :				
(1)	<input checked="" type="checkbox"/> Death	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(2)	<input checked="" type="checkbox"/> Disability	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(3)	<input checked="" type="checkbox"/> Normal Retirement Age	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input checked="" type="checkbox"/>

(c) **Suspension.** The suspension of allocation conditions of Section 3.06(F) (Choose one of (1) or (2)) :

- (1) **Applies.** Applies as follows (Choose one of a., b., or c.) :
- a. **Both.** Applies both to Nonelective Contributions and to Matching Contributions.
 - b. **Nonelective.** Applies only to Nonelective Contributions.
 - c. **Match.** Applies only to Matching Contributions.
- (2) **Does not apply.**

33. **FORFEITURE ALLOCATION METHOD (3.07)** . The Plan Administrator will allocate a Participant forfeiture attributable to all Contribution Types or attributable to all Nonelective Contributions or to all Matching Contributions as follows (Choose one or more of (a) through (g) as applicable. Choose (e) only in conjunction with at least one other election) :

[Note: Even if the Employer elects immediate vesting, the Employer should complete Election 33. See Section 7.07.]

		(1) All Forfeitures	(2) Nonelective Forfeitures	(3) Matching Forfeitures
(a)	<input type="checkbox"/> Additional Nonelective. Allocate as additional Discretionary Nonelective Contribution.	<input type="checkbox"/>	OR	<input type="checkbox"/>
(b)	<input type="checkbox"/> Additional Match. Allocate as additional Discretionary Matching Contribution.	<input type="checkbox"/>	OR	<input type="checkbox"/>
(c)	<input type="checkbox"/> Reduce Nonelective. Apply to Nonelective Contribution.	<input type="checkbox"/>	OR	<input type="checkbox"/>
(d)	<input checked="" type="checkbox"/> Reduce Match. Apply to Matching Contribution.	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>
(e)	<input checked="" type="checkbox"/> Plan expenses. Pay reasonable Plan expenses first (See Section 7.04(C)), then allocate in the manner described above.	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>
(f)	<input type="checkbox"/> Safe harbor/top-heavy exempt. Apply all forfeitures to Safe Harbor Contributions and Plan expenses in accordance with Section 3.07(A)(4).	<input type="checkbox"/>	OR	<input type="checkbox"/>
(g)	<input type="checkbox"/> Describe: _____ (e.g., Forfeitures attributable to transferred balances from Plan X are allocated only to former Plan X participants.)			

34. **FORFEITURE ALLOCATION TIMING (3.07(B))** . See Sections 3.07, 5.07 and 7.07 as to when a forfeiture occurs. Once a forfeiture occurs, this Election 34 determines the timing of the forfeiture allocation. The Plan Administrator will allocate a Participant's forfeiture (Choose one or both of (a) and (b) as applicable) :

		(1) All Forfeitures	(2) Nonelective Forfeitures	(3) Matching Forfeitures
(a)	<input checked="" type="checkbox"/> Same Plan Year. In the same Plan Year in which the designated forfeiture occurs.	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>
(b)	<input type="checkbox"/> Next Plan Year. In the Plan Year following the Plan Year in which the designated forfeiture occurs.	<input type="checkbox"/>	OR	<input type="checkbox"/>

[Note: The elected forfeiture allocation timing applies irrespective of when the Employer makes its contribution(s), if any, for a Plan Year. Even if the Employer elects immediate vesting, the Employer should complete Election 34. See Sections 3.07 and 7.07.]

35. **EMPLOYEE (AFTER-TAX) CONTRIBUTIONS (3.09)** . The following additional elections apply to Employee Contributions under Election 6(f). (Complete (a) and (b)) :

- (a) **Limitations.** The Plan permits Employee Contributions subject to the following limitations, if any, in addition to those already imposed under the Plan (Choose one of (1) or (2)) :
- (1) **None.** No additional limitations.
 - (2) **Additional limitations.** The following additional limitations: _____
- [Note: Any designated limitation(s) must be the same for all Participants and must be definitely determinable.]
- (b) **Matching Contributions.** (Choose one of (1) or (2)) :
- (1) **None.** The Employer will not make any Matching Contributions based on Employee Contributions.
 - (2) **Applies.** For each Plan Year, the Employer’s Matching Contribution made as to Employee Contributions is: _____

36. **DESIGNATED IRA CONTRIBUTIONS (3.12)** . Under Election 6(h), a Participant may make Designated IRA Contributions effective for Plan Years beginning after _____ (date specified must be no earlier than December 31, 2002). (Complete (a) and (b)) :

- (a) **Type of IRA contribution.** A Participant’s Designated IRA Contributions will be (Choose one of (1), (2), or (3)) :
- (1) **Traditional.**
 - (2) **Roth.**
 - (3) **Traditional/Roth.** As the Participant elects at the time of contribution.
- (b) **Type of Account.** A Participant’s Designated IRA Contributions will be held in the following form of Account(s) (Choose one of (1), (2), or (3)) :
- (1) **IRA.**
 - (2) **Individual Retirement Annuity.**
 - (3) **IRA/Individual Retirement Annuity.** As the Participant elects at the time of contribution.

**ARTICLE IV
LIMITATIONS AND TESTING**

[Note: The Employer, in the “Effective as of execution” column under Election 37, must elect those testing elections which are: (i) in effect as of date of the Employer’s execution of this Adoption Agreement; and (ii) if the Adoption Agreement restates the Plan, also are retroactive to the later of the Plan’s original Effective Date or EGTRRA restated Effective Date, except as indicated in Appendix A. If the Employer wishes to change any testing election after it executes this Adoption Agreement, the Employer must elect the changes in the “Changes post-execution” column under Election 37, and the Employer must specify the Plan Year Effective Date(s) of any changed election. The Employer may complete the Effective Date blanks specifying the changed election applies to a single Plan Year (e.g., “2011 only”), or a range of Plan Years (e.g., “2011-2015”) or may specify the change as becoming effective in a specified Plan Year (e.g., “commencing 2010”). If the Employer specifies a single Plan Year only or specifies a range of Plan Years, the Plan becomes subject to the election in the “Effective as of execution” column in the Plan Years commencing after the specified Year(s), unless the Employer subsequently changes the election. If the Employer specifies the change as commencing in a Plan Year, the election applies in the specified Plan Year and in all following Plan Years unless the Employer subsequently changes the election.]

37. **ANNUAL TESTING ELECTIONS (4.06(B))** . The Employer makes the following Plan specific annual testing elections under Section 4.06(B). (Complete (a) and (b)) :

- | | | |
|--|---|---|
| | <p>(1)
Effective as of execution
<small>(and retroactively
if restatement)</small></p> | <p>(2)
Changes post-execution
<small>(specify Plan Year
Effective Date(s))</small></p> |
| <p>(a) Nondiscrimination testing. (Choose one or more of (1), (2), or (3)) :</p> <p>(1) <input checked="" type="checkbox"/> Traditional 401(k) Plan/ADP/ACP test.
The following testing method(s) apply
(Choose a. and b. as applicable) :</p> <p>[Note: The Plan may “split test” for Plan Years commencing in 2005.]</p> | | |

- a. **Current Year Testing.** See Section 4.11(E). Current Year Testing applies to the ADP/ACP tests as elected below (Choose one or both of (i) and (ii)) :
- (i) **ADP test.** Effective Date(s): _____
- (ii) **ACP test.** Effective Date(s): _____

[Note: The Employer may leave (ii) blank if the Plan does not permit Matching Contributions or Employee Contributions and the Plan Administrator will not recharacterize Elective Deferrals as Employee Contributions for testing.]

- b. **Prior Year Testing.** See Section 4.11(I). Prior Year Testing applies to the ADP/ACP tests as elected below. See Sections 4.10(B)(4)(f)(iv) and 4.10(C)(5)(e)(iv) as to the first Plan Year. (Choose one or both of (i) and (ii)) :
- (i) **ADP test.** Effective Date(s): _____
- (ii) **ACP test.** Effective Date(s): _____

[Note: The Employer may leave (ii) blank if the Plan does not permit Matching Contributions or Employee Contributions and the Plan Administrator will not recharacterize Elective Deferrals as Employee Contributions for testing.]

- (2) **Safe Harbor Plan/No testing or ACP test only.** (Choose one of a., b., or c.) :
- a. **No testing.** Effective Date(s): _____
 ADP test safe harbor applies and if applicable, ACP test safe harbor applies.
- b. **ACP test only.** Effective Date(s): _____
 ADP test safe harbor applies, but Plan will perform ACP test as follows (Choose one of (i) or (ii)) :
- (i) **Current Year Testing.** Effective Date(s): _____
- (ii) **Prior Year Testing.** Effective Date(s): _____

[Note: The Employer may elect Prior Year Testing under Election 37(a)(2)b.(ii) only for Plan Years after the Final 401(k) Regulations Effective Date.]

- c. **Possible delayed election.** Effective Date(s): _____
 (maybe notice/supplemental notice)

The Employer under Section 3.05(I)(1) may treat the Plan as a Traditional 401(k) Plan or may make a delayed election to treat the Plan as a Safe Harbor 401(k) Plan. If the Employer gives the maybe and supplemental notices and amends the Plan to provide for the Safe Harbor Nonelective Contribution, the Plan is an ADP test safe harbor plan for the Plan Year to which the maybe and supplemental notices and the amendment apply. If the Employer does not give the supplemental notice, the Plan is a Traditional 401(k) Plan, subject to ADP Current Year Testing and, if applicable, to ACP Current Year Testing. If the Employer gives the supplemental notice and amends the Plan to provide for the Safe Harbor Nonelective Contribution, and the Employer has elected Additional Matching Contributions under Election 30(h) (Choose one of (i) or (ii)) :

- (i) **No testing.** ADP and ACP test safe harbors apply. The Employer's elections under 30(h) as to Additional Matching Contributions satisfy the ACP safe harbor requirements and the Employer elects to apply the Election 30(h) stated ACP test safe harbor conditions (see the Note following Election 30(h)) as to all Additional Matching Contributions.
- (ii) **ACP test only.** ADP safe harbor applies, but the Plan will perform the ACP test as to all Additional Matching Contributions using Current Year Testing.

[Note: Even if the Employer does not elect 37(a)(2)c., the Employer still may make a delayed election into safe harbor status under Section 3.05(I)(1) using the maybe and supplemental notices and by amending the plan to provide for the Safe Harbor Nonelective Contribution. However, in this case, the Employer also must amend the Plan to make its testing elections under this Election 37 consistent with its delayed election into safe harbor status. The Employer then may elect any election under 37(a)(2), including 37(a)(2)c. An Employer's election of 37(a)(2)c. permits the Plan to remain in perpetual possible delayed safe harbor election status, while minimizing the number of Plan amendments required to do so.]

- (3) **SIMPLE 401(k) Plan/No testing.** Effective Date(s): _____
- (b) **HCE determination.** (Complete both (1) and (2)):
- (1) **Top-paid group election.** (Choose one of a. or b.):
- a. **Does not apply.** Effective Date(s): _____
- b. **Applies.** Effective Date(s): _____
- (2) **Calendar year data election (fiscal year Plan only).**
(Choose one of a. or b.):
- a. **Does not apply.** Effective Date(s): _____
- b. **Applies.** Effective Date(s): _____

**ARTICLE V
VESTING REQUIREMENTS**

38. **NORMAL RETIREMENT AGE (5.01)** . A Participant attains Normal Retirement Age under the Plan on the following date (Choose one of (a) or (b)) :

- (a) **Specific age.** The date the Participant attains age 65. [Note: The age may not exceed age 65.]
- (b) **Age/participation.** The later of the date the Participant attains age or the anniversary of the first day of the Plan Year in which the Participant commenced participation in the Plan. [Note: The age may not exceed age 65 and the anniversary may not exceed the 5th.]

39. **EARLY RETIREMENT AGE (5.01)** . (Choose one of (a) or (b)) :

- (a) **Not applicable.** The Plan does not provide for an Early Retirement Age.
- (b) **Early Retirement Age.** Early Retirement Age is the later of: (i) the date a Participant attains age ; (ii) the date a Participant reaches his/her anniversary of the first day of the Plan Year in which the Participant commenced participation in the Plan; or (iii) the date a Participant completes Years of Service.

[Note: The Employer should leave blank any of clauses (i), (ii), and (iii) which are not applicable.]

“Years of Service” under this Election 39 means (Choose one of (1) or (2) as applicable) :

- (1) **Eligibility.** Years of Service for eligibility in Election 16.
- (2) **Vesting.** Years of Service for vesting in Elections 42 and 43.

[Note: Election of an Early Retirement Age does not affect the time at which a Participant may receive a Plan distribution. However, a Participant becomes 100% vested at Early Retirement Age.]

40. **ACCELERATION ON DEATH OR DISABILITY (5.02)** . Under Section 5.02, if a Participant incurs a Severance from Employment as a result of death or Disability (Choose one of (a), (b), or (c)) :

- (a) **Applies.** Apply 100% vesting.
- (b) **Not applicable.** Do not apply 100% vesting. The Participant’s vesting is in accordance with the applicable Plan vesting schedule.
- (c) **Limited application.** Apply 100% vesting, but only if a Participant incurs a Severance from Employment as a result of (Choose one of (1) or (2)) :
- (1) **Death.**
- (2) **Disability.**

41. **VESTING SCHEDULE (5.03)** . A Participant has a 100% Vested interest at all times in his/her Accounts attributable to: (i) Elective Deferrals; (ii) Employee Contributions; (iii) QNECs; (iv) QMACs; (v) Safe Harbor Contributions; (vi) SIMPLE Contributions; (vii) Rollover Contributions; (viii) Prevailing Wage Contributions unless the Prevailing Wage Contract provides otherwise; (ix) DECs; and (x) Designated IRA Contributions. The following vesting schedule applies to Regular Matching Contributions, to Additional Matching Contributions (irrespective of ACP testing status) and to Nonelective Contributions (other than Prevailing Wage Contributions) (Choose (a) or choose one or both of (b) and (d) as applicable. Choose (c) if elect a non-top-heavy schedule under (b) or (d)) :

(a) **Immediate vesting.** 100% Vested at all times in all Accounts.

[Note: Unless all Contribution Types are 100% Vested, the Employer should not elect 41(a). If the Employer elects immediate vesting under 41(a), the Employer should not complete the balance of Election 41 or Elections 42 and 43 (except as noted therein). The Employer must elect 41(a) if the eligibility Service condition under Election 14 as to all Contribution Types (except Elective Deferrals and Safe Harbor Contributions) exceeds one Year of Service or more than 12 months. The Employer must elect 41(b)(1) as to any Contribution Type where the eligibility service condition exceeds one Year of Service or more than 12 months. The Employer should elect 41(b) if any Contribution Type is subject to a vesting schedule.]

(b) **Vesting schedules:** Apply the following vesting schedules (Choose one or more of (1) through (7) as applicable) :

	(1) All Contributions N/A (See Election 41(a))	(2) Nonelective	(3) Regular Matching	(4) Additional Matching (See Section 3.05(F))
(1) <input type="checkbox"/> Immediate vesting		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <input type="checkbox"/> Top-heavy: 6-year graded	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) <input type="checkbox"/> Top-heavy: 3-year cliff	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) <input checked="" type="checkbox"/> Modified top-heavy:	<input type="checkbox"/>	OR <input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Years of Service	Vested %			
Less than 1	a. 0%			
1	b. 0%			
2	c. 50%			
3	d. 75%			
4	e. 100%			
5	f. _____			
6 or more	100%			
(5) <input type="checkbox"/> Non-top-heavy: 7-year graded	N/A	<input type="checkbox"/>	N/A	N/A
(6) <input type="checkbox"/> Non-top-heavy: 5-year cliff	N/A	<input type="checkbox"/>	N/A	N/A
(7) <input type="checkbox"/> Modified non-top-heavy:	N/A	<input type="checkbox"/>	N/A	N/A
Years of Service	Vested %			
Less than 1	a. _____			
1	b. _____			
2	c. _____			
3	d. _____			
4	e. _____			
5	f. _____			
6	g. _____			
7 or more	100%			

[Note: If the Employer does not elect 41(a), the Employer under 41(b) must elect immediate vesting or must elect a top-heavy or modified top-heavy vesting schedule. The modified top-heavy schedule of Election 41(b)(4) must satisfy Code §416. A top-heavy schedule must apply to Regular Matching Contributions and to Additional Matching Contributions. See Section 5.03(A)(1). The Employer as to Nonelective Contributions only may elect one of Elections 41(b)(5), (6), or (7) in addition to electing a top-heavy schedule. The Employer must complete Election 41(c) if it elects any non-top-heavy schedule. If the Employer does not elect a non-top-heavy schedule, the elected top-heavy schedule(s) applies to all Plan Years. If the Employer elects 41(b)(7), the modified non-top-heavy schedule must satisfy Code §411(a)(2) . If the Employer elects Additional Matching under Election 30(h), the Employer should elect vesting under the Additional Matching column in this Election 41(b). That election applies to the Additional Matching even if the Employer has given the maybe notice but does not give the supplemental notice for any Plan Year and as to such Plan Years, the Plan is not a safe harbor plan and the Matching Contributions are not Additional Matching Contributions. If the Plan's Effective Date is after December 31, 2006, do not complete Elections 41(b)(5), (b)(6), or (b)(7).]

(c) **Nonelective Contributions: application of top-heavy schedule** (Choose one of (1) or (2)) :

(1) **Apply in all Plan Years once top-heavy.** Apply the top-heavy vesting schedule under Election 41(b) for the first Plan Year in which the Plan is top-heavy and then in all subsequent Plan Years.

(2) **Apply only in top-heavy Plan Years.** Apply the non-top-heavy schedule under Election 41(b) in all Plan Years in which the Plan is not a top-heavy plan.

- (d) **Special vesting provisions:** The following Vesting schedule applies to Nonelective Contributions: 1 Year of Service -25%, 2 Years of Service -50%, 3 Years of Service—75%, 4 or more Years of Service -100%. Employees who were participants in the Lakefront Capital Holding, Inc. 401(k) Savings Plan on May 14, 2011 shall be vested in accordance to the following schedule: 1 Year of Service -20%, 2 Years of Service-50%, 3 Years of Service-75%, 4 or more Years of Service -100%. Participant accounts as of 4/1/2000 (adjusted for earnings or losses since that date) transferred from the Keystone 401(k) Retirement Plan will become 100% vested upon the participant attaining Age 55 and completion of 4 Years of Service. Effective 1/1/2007, a participant who becomes disabled while performing Qualified Military Service and such disability is determined to meet the definition of Disability shall be 100% vested.

[Note: The Employer under Election 41(d) may describe special vesting provisions from the elections available under Election 41 and/or a combination thereof as to a: (i) Participant group (e.g., Full vesting applies to Division A Employees OR to Employees hired on/before "x" date. 6-year graded vesting applies to Division B Employees OR to Employees hired after "x" date.); and/or (ii) Contribution Type (e.g., Full vesting applies as to Discretionary Nonelective Contributions. 6-year graded vesting applies to Fixed Nonelective Contributions). Any special vesting provision must satisfy Code §411(a) and must be nondiscriminatory.]

42. **YEAR OF SERVICE - VESTING (5.05).** (Complete both (a) and (b)) :

[Note: If the Employer elects the Elapsed Time Method for vesting the Employer should not complete this Election 42. If the Employer elects immediate vesting, the Employer should not complete Election 42 or Election 43 unless it elects to apply a Year of Service for vesting under any other Adoption Agreement election.]

- (a) **Year of Service.** An Employee must complete at least 1,000 Hours of Service during a Vesting Computation Period to receive credit for a Year of Service under Article V. [Note: The number may not exceed 1,000. If left blank, the requirement is 1,000.]
- (b) **Vesting Computation Period.** The Plan measures a Year of Service based on the following 12-consecutive month period (Choose one of (1) or (2)) :
- (1) **Plan Year.**
- (2) **Anniversary Year.**

43. **EXCLUDED YEARS OF SERVICE - VESTING (5.05(C)).** The Plan excludes the following Years of Service for purposes of vesting (Choose (a) or choose one or more of (b) through (e) as applicable) :

- (a) **None.** None other than as specified in Section 5.05(C)(1).
- (b) **Age 18.** Any Year of Service before the Vesting Computation Period during which the Participant attained the age of 18.
- (c) **Prior to Plan establishment.** Any Year of Service during the period the Employer did not maintain this Plan or a predecessor plan.
- (d) **Rule of Parity.** Any Year of Service excluded under the rule of parity. See Plan Section 5.06(C).
- (e) **Additional exclusions.** The following Years of Service: _____

[Note: The Employer under Election 43(e) may describe vesting service exclusions provisions available under Election 43 and/or a combination thereof as to a: (i) Participant group (e.g., No exclusions apply to Division A Employees OR to Employees hired on/before "x" date. The age 18 exclusion applies to Division B Employees OR to Employees hired after "x" date.); or (ii) Contribution Type (e.g., No exclusions apply as to Discretionary Nonelective Contributions. The age 18 exclusion applies to Fixed Nonelective Contributions). Any exclusion specified under Election 43(e) must comply with Code §411(a)(4). Any exclusion must be nondiscriminatory.]

ARTICLE VI DISTRIBUTION OF ACCOUNT BALANCE

44. **MANDATORY DISTRIBUTION (6.01(A)(1)/6.08(D)).** The Plan provides or does not provide for Mandatory Distribution of a Participant's Vested Account Balance following Severance from Employment, as follows (Choose one of (a) or (b)) :

- (a) **No Mandatory Distribution.** The Plan will not make a Mandatory Distribution following Severance from Employment.
- (b) **Mandatory Distribution.** The Plan will make a Mandatory Distribution following Severance from Employment. (Complete (1) and (2). Choose (3) unless the Employer elects to limit Mandatory Distributions to \$1,000 including Rollover Contributions under Elections 44(b)(1)b. and 44(b)(2)b.) :
- (1) **Amount limit.** As to a Participant who incurs a Severance from Employment and who will receive distribution before attaining the later of age 62 or Normal Retirement Age, the Mandatory Distribution maximum amount is equal to (Choose one of a., b., or c.) :
- a. **\$5,000.**
- b. **\$1,000.**
- c. **Specify amount:** \$ _____ (may not exceed \$5,000).

- (2) **Application of Rollovers to amount limit.** In determining whether a Participant's Vested Account Balance exceeds the Mandatory Distribution dollar limit in Election 44(b)(1), the Plan (Choose one of a. or b.) :
- (a) **Disregards Rollover Contribution Account.**
- (b) **Includes Rollover Contribution Account.**
- (3) **Amount of Mandatory Distribution subject to Automatic Rollover.** A Mandatory Distribution to a Participant before attaining the later of age 62 or Normal Retirement Age is subject to Automatic Rollover under Section 6.08(D) (Choose one of a. or b.) :
- (a) **Only if exceeds \$1,000.** Only if the amount of the Mandatory Distribution exceeds \$1,000, which for this purpose must include any Rollover Contributions Account.
- (b) **Specify lesser amount.** Only if the amount of the Mandatory Distribution is at least: \$ _____ (specify \$1,000 or less) .

45. **SEVERANCE DISTRIBUTION TIMING (6.01)** . Subject to the timing limitations of Section 6.01(A)(1) in the case of a Mandatory Distribution, or in the case of any Distribution Requiring Consent under Section 6.01(A)(2), for which consent is received, the Plan Administrator will instruct the Trustee to distribute a Participant's Vested Account Balance as soon as is administratively practical following the time specified below (Choose one or more of (a) through (k) as applicable) :

[Note: If a Participant dies after Severance from Employment but before receiving distribution of all of his/her Account, the elections under this Election 45 no longer apply. See Section 6.01(B) and Election 49.]

		(1) Mandatory Distribution	(2) Distribution Requiring Consent
(a)	<input type="checkbox"/> Immediate. Immediately following Severance from Employment.	<input type="checkbox"/>	<input type="checkbox"/>
(b)	<input type="checkbox"/> Next Valuation Date. After the next Valuation Date following Severance from Employment.	<input type="checkbox"/>	<input type="checkbox"/>
(c)	<input type="checkbox"/> Plan Year. In the _____ Plan Year following Severance from Employment (e.g., next or fifth) .	<input type="checkbox"/>	<input type="checkbox"/>
(d)	<input type="checkbox"/> Plan Year quarter. In the _____ Plan Year quarter following Severance from Employment (e.g., next or fifth) .	<input type="checkbox"/>	<input type="checkbox"/>
(e)	<input type="checkbox"/> Contribution Type Accounts. _____ as to the Participant's _____ Account(s) and as to the Participant's _____ Account(s) (e.g., As soon as is practical following Severance from Employment as to the Participant's Elective Deferral Account and as soon as is practical in the next Plan Year following Severance from Employment as to the Participant's Nonelective and Matching Accounts).	<input type="checkbox"/>	<input type="checkbox"/>
(f)	<input type="checkbox"/> Vesting controlled timing. If the Participant's total Vested Account Balance exceeds \$ _____, distribute (specify timing) and if the Participant's total Vested Account Balance does not exceed \$ _____, distribute _____ (specify timing) .	<input type="checkbox"/>	<input type="checkbox"/>
(g)	<input type="checkbox"/> Distribute at Normal Retirement Age. As to a Mandatory Distribution, distribute not later than 60 days after the beginning of the Plan Year following the Plan Year in which the previously severed Participant attains the earlier of Normal Retirement Age or age 65. [Note: An election under column (2) only will have effect if the Plan's NRA is less than age 62.]	<input type="checkbox"/>	<input type="checkbox"/>
(h)	<input type="checkbox"/> Acceleration. Notwithstanding any later specified distribution date in Election 45, a Participant may elect an earlier distribution following Severance from Employment (Choose (1) and (2) as applicable) :	<input type="checkbox"/>	<input type="checkbox"/>
(1)	<input type="checkbox"/> Disability. If Severance from Employment is on account of Disability or if the Participant incurs a Disability following Severance from Employment.		
(2)	<input type="checkbox"/> Hardship. If the Participant incurs a hardship under Section 6.07 following Severance from Employment.		

- (i) **Required distribution at Normal Retirement Age.** A severed Participant may not elect to delay distribution beyond the later of age 62 or Normal Retirement Age. N/A
- (j) **No buy-back/vesting controlled timing.**
Distribute as soon as is practical following Severance from Employment if the Participant is fully Vested.
Distribute as soon as is practical following a Forfeiture Break in Service if the Participant is not fully Vested.
- (k) **Describe Severance from Employment distribution timing:** An Employee who incurs a Severance from Employment may not elect to receive a Distribution Requiring Consent during his first 30 days following his Severance from Employment, unless he attains Normal Retirement Age or dies. Mandatory Distributions may not begin during the first 30 days following Severance from Employment, unless severed Participant attains Normal Retirement Age or dies.

[Note: The Employer under Election 45(k) may describe Severance from Employment distribution timing provisions from the elections available under Election 45 and/or a combination thereof as to any: (i) Participant group (e.g., Immediate distribution after Severance of Employment applies to Division A Employees OR to Employees hired on/before "x" date. Distribution after the next Valuation Date following Severance from Employment applies to Division B Employees OR to Employees hired after "x" date.); (ii) Contribution Type (e.g., As to Division A Employees, immediate distribution after Severance of Employment applies as to Elective Deferral Accounts and distribution after the next Valuation Date following Severance from Employment applies to Nonelective Contribution Accounts); and/or (iii) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be distributable in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 45(k) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; (iii) comply with Code §401(a)(14) timing requirements; (iv) be nondiscriminatory and (v) preserve Protected Benefits as required.]

46. **IN-SERVICE DISTRIBUTIONS/EVENTS (6.01(C)).** A Participant may elect an In-Service Distribution of the designated Contribution Type Accounts based on any of the following events in accordance with Section 6.01(C) (Choose one of (a) or (b)) :

[Note: If the Employer elects any In-Service Distribution option, a Participant may elect to receive as many In-Service Distributions per Plan Year (with a minimum of one per Plan Year) as the Plan Administrator's In-Service Distribution form or policy may permit. If the form or policy is silent, the number of In-Service Distributions is not limited. Prevailing Wage Contributions are treated as Nonelective Contributions unless the Prevailing Wage Contract provides otherwise. See Section 6.01(C)(4)(d) if the Employer elects to use Prevailing Wage Contributions to offset other contributions.]

- (a) **None** . The Plan does not permit any In-Service Distributions except as to any of the following (if applicable): (i) RMDs under Section 6.02; (ii) Protected Benefits; and (iii) under Section 6.01(C)(4) as to Employee Contributions, R
- (b) **Permitted** . In-Service Distributions are permitted as follows from the designated Contribution Type Accounts (Choose one or more of (1) through (9)) :

[Note: Unless the Employer elects otherwise in Election 46(b)(9), Elective Deferrals under Election 46(b) includes Pre-Tax and Roth Deferrals and Matching Contributions includes Additional Matching Contributions, irrespective of the Plan's ACP testing status.]

	(1) All Contributions		(2) Elective Deferrals		(3) Safe Harbor Contributions	(4) QNECs	(5) QMACs	(6) Matching Contrib.	(7) Nonelective/ SIMPLE
(1) <input type="checkbox"/> None . Except for Election 46(a) exceptions.	N/A (See Election 46(a))		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <input checked="" type="checkbox"/> Age 59 1/2 (must be at least 59 1/2) .		OR	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) <input type="checkbox"/> Age _____ (may be less than 59 1/2) .	N/A		N/A		N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>
(4) <input checked="" type="checkbox"/> Hardship (safe harbor) . See Section 6.07(A).	N/A		<input checked="" type="checkbox"/>		N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>
(5) <input type="checkbox"/> Hardship (non- safe harbor) . See Section 6.07(B).	N/A		N/A		N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>
(6) <input type="checkbox"/> Disability .	<input type="checkbox"/>	OR	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(7) <input type="checkbox"/> _____ year contributions . (specify minimum of two years) See Section 6.01(C)(4)(a)(i).	N/A		N/A		N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>

- (8) _____ months of participation . N/A N/A N/A N/A N/A
 (specify minimum of
 60 months) See
 Section 6.01(C)(4)(a)(ii).
- (9) **Describe:** A participant who was a former participant in the Global Trade Alliance Inc. 401(k) Plan may receive an In-Service Distribution of their prior 9/1/2008 accounts (adjusted for earnings or losses since that date) upon Disability as defined in the prior Global Trade Alliance Inc. 401(k) Plan. Prior Matching and Nonelective accounts transferred from the Keystone 401(k) Retirement Plan continue to be available for an In-Service Distribution upon completion of 60 months of participation.

[Note: The Employer under Election 46(b)(9) may describe In-Service Distribution provisions from the elections available under Election 46 and/or a combination thereof as to any: (i) Participant group (e.g., Division A Employee Accounts are distributable at age 59 1/2 OR Accounts of Employees hired on/before "x" date are distributable at age 59 1/2). No In-Service Distributions apply to Division B Employees OR to Employees hired after "x" date.); (ii) Contribution Type (e.g., Discretionary Nonelective Contribution Accounts are distributable on Disability. Fixed Nonelective Contribution Accounts are distributable on Disability or Hardship (non-safe harbor)); and/or (iii) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be distributable in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 46(b)(9) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; (iii) preserve Protected Benefits as required; (iv) be nondiscriminatory; and (v) not permit an "early" distribution of any Restricted 401(k) Accounts or Restricted Pension Accounts. See Section 6.01(C)(4).]

In-Service Distribution of other Accounts. See Section 6.01(C)(4) as to In-Service Distribution of Employee Contributions, Rollover Contributions, DECs, Transfers, and Designated IRA Contributions.

47. **IN-SERVICE DISTRIBUTIONS/ADDITIONAL CONDITIONS (6.01(C)).** The following additional conditions apply to In-Service Distributions under Election 46(b) (Choose one of (a) or (b)) :

[Note: The Employer should complete Election 47 if the Employer elects any In-Service Distributions under Election 46(b).]

- (a) **Additional conditions.** (Complete (1), Choose (2) and (3) as applicable) :
- (1) **Vesting.** A Participant may receive an In-Service Distribution under Election 46(b) based on vesting in the distributing Account as follows (Choose one of a., b., or c.) :
- a. **100% vesting required.** A Participant may not receive any In-Service Distribution unless the Participant is 100% Vested in the distributing Account.
- b. **100% vesting required except hardship.** A Participant may not receive any In-Service Distribution unless the Participant is 100% Vested in the distributing Account, unless the distribution is based on hardship.
- c. **Not required.** A Participant may receive an In-Service Distribution even from a partially-Vested Account, but the amount distributed may not exceed the Vested amount in the distributing partially-Vested Account.
- (2) **Minimum amount.** A Participant may not receive an In-Service Distribution in an amount which is less than: \$ _____ (specify amount not exceeding \$1,000).
- (3) **Describe other conditions:** _____

[Note: An Employer's election under Election 47(a)(3) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; (iii) preserve Protected Benefits as required; (iv) be nondiscriminatory; and (v) not permit an "early" distribution of any Restricted 401(k) Accounts or Restricted Pension Accounts. See Section 6.01(C)(4).]

- (b) **No other conditions.** A Participant may elect to receive an In-Service Distribution upon any Election 46(b) event without further condition, provided that the amount distributed may not exceed the Vested amount in the distributing Account.

48. **POST-SEVERANCE AND LIFETIME RMD DISTRIBUTION METHODS (6.03)** . A Participant whose Vested Account Balance exceeds \$5,000 (or any lesser amount elected in Appendix B, Election 54(g)(7)): (i) who has incurred a Severance from Employment and will receive a distribution; or (ii) who remains employed but who must receive lifetime RMDs, may elect distribution under one of the following method(s) of distribution described in Section 6.03 and subject to any Section 6.03 limitations. *(Choose one or more of (a) through (f) as applicable) :*

[Note: If a Participant dies after Severance from Employment but before receiving distribution of all of his/her Account, the elections under this Election 48 no longer apply. See Section 6.01(B) and Election 49.]

- (a) **Lump-Sum.** See Section 6.03(A)(3).
- (b) **Installments only if Participant subject to lifetime RMDs.** A Participant who is required to receive lifetime RMDs may receive installments payable in monthly, quarterly or annual installments equal to or exceeding the annual RMD amount. See Sections 6.02(A) and 6.03(A)(4)(a).
- (c) **Installments.** See Section 6.03(A)(4).
- (d) **Alternative Annuity:** _____ . See Section 6.03(A)(5).

[Note: Under a Plan which is subject to the joint and survivor annuity distribution requirements of Section 6.04 (Election 50(b)), the Employer may elect under 48(d) to offer one or more additional annuities (Alternative Annuity) to the Plan's QJSA or QPSA. If the Employer elects under Election 50(a) to exempt Exempt Participants from the joint and survivor annuity requirements, the Employer should not elect to provide an Alternative Annuity under 48(d).]

- (e) **Ad-Hoc distributions** . See Section 6.03(A)(6).

[Note: If an Employer elects to permit Ad-Hoc distributions: (i) the option must be available to all Participants; and (ii) the option is a Protected Benefit .]

- (f) **Describe distribution method(s) :** _____

[Note: The Employer under Election 48(f) may describe Severance from Employment distribution methods from the elections available under Election 48 and/or a combination thereof as to any: (i) Participant group (e.g., Division A Employee Accounts are distributable in a Lump-Sum OR Accounts of Employees hired after "x" date are distributable in a Lump-Sum. Division B Employee Accounts are distributable in a Lump-Sum or in Installments OR Accounts of Employees hired on/before "x" date are distributable in a Lump-Sum or in Installments.); (ii) Contribution Type (e.g., Discretionary Nonelective Contribution Accounts are distributable in a Lump-Sum. Fixed Nonelective Contribution Accounts are distributable in a Lump-Sum or in Installments); and/or (iii) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be distributable in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 48(f) must: (i) be objectively determinable; (ii) not be subject to Employer, Plan Administrator or Trustee discretion; (iii) be nondiscriminatory; and (iv) preserve Protected Benefits as required.]

49. **BENEFICIARY DISTRIBUTION ELECTIONS (6.01(B)/6.02(B)/6.03)** . Subject to the Participant's elections under Section 6.01(B)(1) as to the timing and method of distribution of the Participant's Account to the Participant's Beneficiary (which Participant elections must be consistent with the Plan and this Election 49), in the case of a Participant's death, the Beneficiary will receive distribution of the Participant's Account (or of the Beneficiary's share thereof) as follows *(Complete (a), (b), and (c)) :*

[Note: For purposes of this Election 49, unless otherwise noted, a "Beneficiary" includes, but is not limited to a "Designated Beneficiary" under Section 6.02(E)(1).]

	(1) Spouse Beneficiary	(2) Other Beneficiary
(a) Timing. The Plan will distribute to the Beneficiary as soon as is practical at (or not later than) the following time or date <i>(Choose one of (1) through (4). Choose (5) if applicable):</i>		
(1) <input checked="" type="checkbox"/> Immediate. Immediately following the Participant's death.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
(2) <input type="checkbox"/> Next Calendar Year. In the calendar year which next follows the calendar year of the Participant's death, but not later than December 31 of such following calendar year.	<input type="checkbox"/>	<input type="checkbox"/>
(3) <input type="checkbox"/> As Beneficiary elects. At such time as the Beneficiary may elect, provided that distribution pursuant to such election (or in the absence of any Beneficiary election) must commence no later than the Section 6.02 required date.	<input type="checkbox"/>	<input type="checkbox"/>
(4) <input type="checkbox"/> Describe: _____	<input type="checkbox"/>	<input type="checkbox"/>

[Note: The Employer under Election 49(a)(4) may describe an alternative distribution timing or afford the Beneficiary an election which is narrower than that permitted under election 49(a)(3). However, any election under Election 49(a)(4) must require distribution to commence no later than the Section 6.02 required date.]

- (5) **Death before DCD; spousal election to delay.** If the Participant dies before his/her Distribution Commencement Date and the Participant's sole Designated Beneficiary is his/her spouse, the spouse may elect to delay distribution until the end of the calendar year in which the Participant would have attained age 70 1/2, if that date is later than the date upon which distribution would be required to commence to a non-spouse Beneficiary. N/A
- (b) **Method.** The Plan will distribute to the Beneficiary under the following distribution method(s). If more than one method is elected, the Beneficiary may choose the method of distribution. (Choose one or more of (1) through (4) but do not elect (4) only):
- (1) **Lump-Sum**. See Section 6.03(A)(3).
- (2) **Installments sufficient to satisfy RMD**. See Section 6.03(A)(4)(a). An Installment in each Distribution Calendar Year must at least equal the RMD amount.
- (3) **Ad-Hoc sufficient to satisfy RMD**. See Section 6.03(A)(6) The Beneficiary must elect an Ad-Hoc distribution for each Distribution Calendar Year at least equal to the RMD amount.
- [Note: If an Employer elects to permit Ad-Hoc distributions: (i) the option must be available to all Beneficiaries; and (ii) the option is a Protected Benefit.]
- (4) **QPSA**. See Section 6.04(B). N/A

[Note: If the Employer elects 50(b), the Employer should elect 49(b)(4). If the Employer elects 50(a), the Employer should not elect 49(b)(4). A surviving spouse may elect to waive the QPSA in favor of another method.]

- (c) **Death before the DCD.** If a Participant dies before the Distribution Commencement Date, the distribution to the Beneficiary will be made in accordance with the following rule(s) (Choose one of (1), (2), or (3)):
- (1) **Beneficiary election.** See Section 6.02(B)(1)(e). This election applies only if the Beneficiary is a Designated Beneficiary under Treas. Reg. §1.401(a)(9)-4. If not, the 5-year rule applies. In the absence of the Designated Beneficiary's election, the Life Expectancy rule applies. The Employer in Appendix B may elect to change the default (no Designated Beneficiary election) to the 5-year rule.
- (2) **Life Expectancy rule.** See Section 6.02(B)(1)(d). This election applies only if the Beneficiary is a Designated Beneficiary under Treas. Reg. §1.401(a)(9)-4. If not, the 5-year rule applies.
- (3) **5-year rule.** See Section 6.02(B)(1)(c). This election applies regardless of whether the Beneficiary is a Designated Beneficiary under Treas. Reg. §1.401(a)(9)-4.

50. **JOINT AND SURVIVOR ANNUITY REQUIREMENTS (6.04)**. The joint and survivor annuity distribution requirements of Section 6.04 (Choose one of (a) or (b)):

- (a) **Profit sharing exception.** Do not apply to an Exempt Participant, as described in Section 6.04(G)(1), but apply to any other Participants (or to a portion of their Account as described in Section 6.04(G)) (Complete (1)):
- (1) **One-year marriage rule.** Under Section 7.05(A)(3) relating to an Exempt Participant's Beneficiary designation under the profit sharing exception (Choose one of a. or b.):
- a. **Applies.** The one-year marriage rule applies.
- b. **Does not apply.** The one-year marriage rule does not apply.

- (b) **Joint and survivor annuity applicable.** Section 6.04 applies to all Participants (*Complete (1)*):
- (1) **One-year marriage rule.** Under Section 6.04(B) relating to the QPSA (*Choose one of a. or b.*):
- a. **Applies.** The one-year marriage rule applies.
- b. **Does not apply.** The one-year marriage rule does not apply.

**ARTICLE VII
ADMINISTRATIVE PROVISIONS**

51. **ALLOCATION OF EARNINGS (7.04(B))** . For each Contribution Type provided under the Plan, the Plan allocates Earnings using the following method (*Choose one or more of (a) through (f) as applicable*) :

[*Note: Elective Deferrals/Employee Contributions also includes Rollover Contributions, Transfers, DEC's and Designated IRA Contributions, Matching Contributions includes all Matching Contributions and Nonelective Contributions includes all Nonelective Contributions unless described otherwise in Election 51(f).*]

		(1) All Contributions		(2) Elective Deferrals/ Employee Contributions	(3) Matching Contributions	(4) Nonelective Contributions
(a)	<input checked="" type="checkbox"/>	Daily. See Section 7.04(B)(4)(a).	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>
(b)	<input type="checkbox"/>	Balance forward. See Section 7.04(B)(4)(b).	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>
(c)	<input type="checkbox"/>	Balance forward with adjustment. See Section 7.04(B)(4)(c). Allocate pursuant to the balance forward method, except treat as part of the relevant Account at the beginning of the Valuation Period % of the contributions made during the following Valuation Period:	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>
(d)	<input type="checkbox"/>	Weighted average. See Section 7.04(B)(4)(d). If not a monthly weighting period, the weighting period is:	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>
(e)	<input type="checkbox"/>	Participant-Directed Account. See Section 7.04(B)(4)(e).	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>
(f)	<input type="checkbox"/>	Describe Earnings allocation method:				

[*Note: The Employer under Election 51(f) may describe Earnings allocation methods from the elections available under Election 51 and/or a combination thereof as to any: (i) Participant group (e.g., Daily applies to Division A Employees OR to Employees hired after "x" date. Balance forward applies to Division B Employees OR to Employees hired on/before "x" date.); (ii) Contribution Type (e.g., Daily applies as to Discretionary Nonelective Contribution Accounts. Participant-Directed Account applies to Fixed Nonelective Contribution Accounts); (iii) investment type, investment vendor or Account type (e.g., Balance forward applies to investments placed with vendor A and Participant-Directed Account applies to investments placed with vendor B OR Daily applies to Participant-Directed Accounts and balance forward applies to pooled Accounts); and/or (iv) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be subject to Earnings allocation in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 51(f) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; and (iii) be nondiscriminatory.]*

**ARTICLE VIII
TRUSTEE AND CUSTODIAN, POWERS AND DUTIES**

52. **VALUATION OF TRUST (8.02(C)(4))** . In addition to the last day of the Plan Year, the Trustee (or Named Fiduciary as applicable) must value the Trust Fund on the following Valuation Date(s) (Choose one or more of (a) through (d) as applicable) :

[Note: Elective Deferrals/Employee Contributions also include Rollover Contributions, Transfers, DEC's and Designated IRA Contributions, Matching Contributions includes all Matching Contributions and Nonelective Contributions includes all Nonelective Contributions unless described otherwise in Election 52(d).]

	(1)		(2)		(3)		(4)
	All Contributions		Elective Deferrals/ Employee Contributions		Matching Contributions		Nonelective Contributions
(a) <input type="checkbox"/> No additional Valuation Dates.	<input type="checkbox"/>	OR	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
(b) <input checked="" type="checkbox"/> Daily Valuation Dates. Each business day of the Plan Year on which Plan assets for which there is an established market are valued and the Trustee is conducting business.	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
(c) <input type="checkbox"/> Last day of a specified period. The last day of each _____ of the Plan Year.	<input type="checkbox"/>	OR	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
(d) <input type="checkbox"/> Specified Valuation Dates:							

[Note: The Employer under Election 52(d) may describe Valuation Dates from the elections available under Election 52 and/or a combination thereof as to any: (i) Participant group (e.g., No additional Valuation Dates apply to Division A Employees OR to Employees hired after "x" date. Daily Valuation Dates apply to Division B Employees OR to Employees hired on/before "x" date.); (ii) Contribution Type (e.g., No additional Valuation Dates apply as to Discretionary Nonelective Contribution Accounts. The last day of each Plan Year quarter applies to Fixed Nonelective Contribution Accounts); (iii) investment type, investment vendor or Account type (e.g., No additional Valuation Dates apply to investments placed with vendor A and Daily Valuation Dates apply to investments placed with vendor B OR Daily Valuation Dates apply to Participant-Directed Accounts and no additional Valuation Dates apply to pooled Accounts); and/or (iv) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be subject to Trust valuation in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 52(d) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; and (iii) be nondiscriminatory.]

EXECUTION PAGE

The Employer, by executing this Adoption Agreement, hereby agrees to the provisions of this Plan and Trust.

Employer: LKQ Corporation
Date: December 12, 2011
Signed: /s/ Walter Hanley
Walter Hanley, Senior VP [print name/title]

The Trustee (and Custodian, if applicable), by executing this Adoption Agreement, hereby accepts its position and agrees to all of the obligations, responsibilities and duties imposed upon the Trustee (or Custodian) under the Prototype Plan and Trust. If the Employer under Election 5(c) will use a separate Trust, the Trustee need not execute this Adoption Agreement.

Nondiscretionary Trustee(s): Wells Fargo Bank, N.A.
Date: December 13, 2011
Signed: /s/ Donna K. Dickinson
Donna K. Dickinson, VP [print name/title]

Nondiscretionary Trustee(s):
Date:
Signed: [print name/title]

Custodian(s) (Optional) :
Date:
Signed: [print name/title]

Use of Adoption Agreement. Failure to complete properly the elections in this Adoption Agreement may result in disqualification of the Employer's Plan. The Employer only may use this Adoption Agreement only in conjunction with the basic plan document referenced by its document number on Adoption Agreement page one.

Execution for Page Substitution Amendment Only. If this paragraph is completed, this Execution Page documents an amendment to Adoption Agreement Election(s) effective , by substitute Adoption Agreement page number(s) . The Employer should retain all Adoption Agreement Execution Pages and amended pages. [Note: The Effective Date may be retroactive or may be prospective as permitted under Applicable Law.]

Prototype Plan Sponsor. The Prototype Plan Sponsor identified on the first page of the basic plan document will notify all adopting Employers of any amendment to this Prototype Plan or of any abandonment or discontinuance by the Prototype Plan Sponsor of its maintenance of this Prototype Plan. For inquiries regarding the adoption of the Prototype Plan, the Prototype Plan Sponsor's intended meaning of any Plan provisions or the effect of the Opinion Letter issued to the Prototype Plan Sponsor, please contact the Prototype Plan Sponsor at the following address and telephone number: 1525 West W.T. Harris Blvd., Charlotte, North Carolina 28288-1176, 800-669-5812 .

Reliance on Sponsor Opinion Letter. The Prototype Plan Sponsor has obtained from the IRS an Opinion Letter specifying the form of this Adoption Agreement and the basic plan document satisfy, as of the date of the Opinion Letter, Code §401. An adopting Employer may rely on the Prototype Sponsor's IRS Opinion Letter only to the extent provided in Rev. Proc. 2005-16. The Employer may not rely on the Opinion Letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the Opinion Letter and in Rev. Proc. 2005-16, Sections 19.02 and 19.03. In order to have reliance in such circumstances or with respect to such qualification requirements, the Employer must apply for a determination letter to Employee Plans Determinations of the IRS.

APPENDIX A
EGTRRA RESTATED PLANS — SPECIAL EFFECTIVE DATES
[Covering period from restated Effective Date in Election 4(b) until Employer executes EGTRRA restatement]

53. **SPECIAL EFFECTIVE DATES (1.19)** . The Employer elects or does not elect Appendix A special Effective Date(s) as follows. (Choose (a) or one or more of (b) through (r) as applicable) :

[Note: If the Employer elects 53(a), do not complete the balance of this Election 53.]

(a) **Not applicable**. The Employer does not elect any Appendix A special Effective Dates.

[Note: The Employer should use this Appendix A where it is restating its Plan for EGTRRA with a retroactive Effective Date, but where one or more Adoption Agreement elections under the restated Plan became effective after the Plan's general restatement Effective Date under Election 4(b). For periods prior to the below-specified special Effective Date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement control for purposes of the designated provisions. Any special Effective Date the Employer elects must comply with Applicable Law.]

(b) **Contribution Types (1.12)** . The Contribution Types under Election(s) 6 are effective:

[Note: The Plan may not permit Roth Deferrals before January 1, 2006.]

(c) **Excluded Employees (1.21(D))**. The Excluded Employee provisions under Election(s) 8 are effective:

(d) **Compensation (1.11)**. The Compensation definition under Election(s) (specify 9-11 as applicable) are effective:

(e) **Eligibility (2.01-2.03)**. The eligibility provisions under Election(s) (specify 14-19 as applicable) are effective:

(f) **Elective Deferrals (3.02(A)-(C))** . The Elective Deferral provisions under Election(s) (specify 20-22 as applicable) are effective:

(g) **Catch-Up Deferrals (3.02(D))**. The Catch-Up Deferral provisions under Election 23 are effective:

(h) **Matching Contributions (3.03)**. The Matching Contribution provisions under Election(s) (specify 24-26 as applicable) are effective:

(i) **Nonelective Contributions (3.04)**. The Nonelective Contribution provisions under Election(s) (specify 27-29 as applicable) are effective:

(j) **401(k) safe harbor (3.05)** . The 401(k) safe harbor provisions under Election(s) 30 are effective:

(k) **Allocation conditions (3.06)**. The allocation conditions under Election(s) (specify 31-32 as applicable) are effective:

(l) **Forfeitures (3.07)**. The forfeiture allocation provisions under Election(s) (specify 33-34 as applicable) are effective:

(m) **Employee Contributions (3.09)** . The Employee Contribution provisions under Election(s) 35 are effective:

(n) **Testing elections (4.06(B))**. The testing elections under Election(s) 37 under the "Effective as of execution (and retroactively if restatement)" column are effective:

(o) **Vesting (5.03)**. The vesting provisions under Election(s) (specify 38-43 as applicable) are effective:

(p) **Distributions (6.01 and 6.03)**. The distribution elections under Election(s) (specify 44-50 as applicable) are effective:

(q) **Earnings/Trust valuation (7.04(B)/8.02(C)(4))**. The Earnings allocation and Trust valuation provisions under Election(s) (specify 51-52 as applicable) are effective:

(r) **Special Effective Date(s) for other elections (specify elections and dates)** :

**APPENDIX B
BASIC PLAN DOCUMENT OVERRIDE ELECTIONS**

54. **BASIC PLAN OVERRIDES.** The Employer elects or does not elect to override various basic plan provisions as follows (Choose (a) or choose one or more of (b) through (i) as applicable) :

[Note: If the Employer elects 54(a), do not complete the balance of this Election 54.]

(a) **Not applicable.** The Employer does not elect to override any basic plan provisions.

[Note: The Employer at the time of restating its Plan with this Adoption Agreement may make an election on Appendix A (Election 53(r)) to specify a special Effective Date for any override provision the Employer elects in this Election 54. If the Employer, after it has executed this Adoption Agreement, later amends its Plan to change any election on this Appendix B, the Employer should document the Effective Date of the Appendix B amendment on the Execution Page or otherwise in the amendment.]

(b) **Definition (Article I) overrides.** (Choose one or more of (1) through (9) as applicable) :

- (1) **W-2 Compensation exclusion of paid/reimbursed moving expenses (1.11(B)(1)).** W-2 Compensation excludes amounts paid or reimbursed by the Employer for moving expenses incurred by an Employee, but only to the extent that, at the time of payment, it is reasonable to believe that the Employee may deduct these amounts under Code §217.
- (2) **Alternative (general) 415 Compensation (1.11(B)(4)).** The Employer elects to apply the alternative (general) 415 definition of Compensation in lieu of simplified 415 Compensation. As to amounts received from an unfunded nonqualified deferred compensation plan which is includable in gross income in the taxable year of receipt (Choose one of a. or b.) :
- a. **Include.** Include the nonqualified deferred compensation.
- b. **Do not include.** Do not include the nonqualified deferred compensation.
- (3) **Inclusion of Deemed 125 Compensation (1.11(C)).** Compensation under Section 1.11 includes Deemed 125 Compensation.
- (4) **Inclusion of Post-Severance Compensation (1.11(I) and 4.05(C)(1)).** The Plan includes Post-Severance Compensation within the meaning of Prop. Treas. Reg. §1.415(c)-2(e) as described in Sections 1.11(I) and 4.05(C)(1) as follows (Choose one or both of a. and b.) :
- a. **Include for 415 testing.** Include for 415 testing and for other testing which uses 415 Compensation. This provision applies effective as of _____ (specify a date which is no earlier than January 1, 2005).
- b. **Include for allocations.** Include for allocations as follows (specify affected Contribution Type(s) and any adjustments to Post-Severance Compensation used for allocation) : _____ . This provision applies effective as of _____ (specify a date which is no earlier than January 1, 2002) .
- (5) **Inclusion of Deemed Disability Compensation (1.11(K)).** Include Deemed Disability Compensation. (Choose one of a. or b.) :
- a. **NHCEs only.** Apply only to disabled NHCEs.
- b. **All Participants.** Apply to all disabled Participants. The Employer will make Employer Contributions for such disabled Participants for: _____ (specify a fixed or determinable period).
- (6) **Early application of final 401(k) regulations (1.28).** The Employer (consistent with the Plan Administrator's operation of the Plan) elects to apply the final 401(k) regulations before the beginning of the 2006 Plan Year. The Employer elects to apply the regulations effective as of: _____ (specify Plan Year ending after December 29, 2004, e.g., Plan Year ending December 31, 2004 OR Plan Year beginning January 1, 2005) .
- (7) **Leased Employees (1.21(B)).** The Employer for purposes of the following Contribution Types, does not exclude Leased Employees: _____ (specify Contribution Types) .
- (8) **Offset if contributions to leasing organization plan (1.21(B)(2)).** The Employer will reduce allocations to this Plan for any Leased Employee to the extent that the leasing organization contributes to or provides benefits under a leasing organization plan to or for the Leased Employee and which are attributable to the Leased Employee's services for the Employer. The amount of the offset is as follows:

[Note: The election of an offset under this Election 54(b)(8) requires that the Employer aggregate its plan with the leasing organization's plan for coverage and nondiscrimination testing.]

- (9) **Reclassified Employees (1.21(D)(3)).** The Employer for purposes of the following Contribution Types, does not exclude Reclassified Employees (or the following categories of Reclassified Employees): _____ (specify Contribution Types and/or categories of Reclassified Employees) .

- (c) **Rule of parity** — participation (Article II) override (2.03(D)). For purposes of Plan participation, the Plan applies the “rule of parity” under Code §410(a)(5)(D).
- (d) **Contribution/allocation (Article III) overrides.** (Choose one or more of (1) through (7) as applicable) :
- (1) **Treatment of Automatic Deferrals as Roth Deferrals (3.02(B)(7)).** The Employer elects to treat Automatic Deferrals as Roth Deferrals in lieu of treating Automatic Deferrals as Pre-Tax Deferrals.
- (2) **Application of Safe Harbor Contributions to other allocations (3.05(E)(11)).** Any Safe Harbor Nonelective Contributions allocated to a Participant’s account will *not* be applied toward (offset) any allocation to the Participant of a non-Safe Harbor Nonelective Contribution.
- (3) **Short Plan Year or allocation period (3.06(B)(1)(c)).** The Plan Administrator (Choose one of a. or b.) :
- a. **No pro-ration.** Will *not* pro-rate Hours of Service in any short allocation period.
- b. **Pro-ration based on months.** Will pro-rate any Hour of Service requirement based on the number of months in the short allocation period.
- (4) **Limited waiver of allocation conditions for re-hired Participants (3.06(G)).** The allocation conditions the Employer has elected in the Adoption Agreement do not apply to re-hired Participants in the Plan Year they resume participation, as described in Section 3.06(G).
- (5) **Associated Match forfeiture timing (3.07(A)(1)(c)).** Forfeiture of associated matching contributions occurs in the Testing Year.
- (6) **Safe Harbor top-heavy exempt fail-safe (3.07(A)(4)).** In lieu of ordering forfeitures as (a), (b), (c), and (d) under Section 3.07(A)(4), the Employer establishes the following forfeiture ordering rules (Specify the ordering rules, for example, (d), (a), (b), and (c)) :
- (7) **Suspension (3.06(F)(3)).** The Plan Administrator in applying Section 3.06(F) will (Choose one or more of a., b., and c. as applicable) :
- a. **Re-order tiers.** Apply the suspension tiers in Section 3.06(F)(2) in the following order: (specify order) .
- b. **Hours of Service tie-breaker.** Apply the greatest Hours of Service as the tie-breaker within a suspension tier in lieu of applying the lowest Compensation.
- c. **Additional/other tiers.** Apply the following additional or other tiers: (specify suspension tiers and ordering) .
- (e) **Testing (Article IV) overrides.** (Choose one or both of (1) and (2) as applicable) :
- (1) **Early application of Gap Period income to Excess Deferrals (4.11(C)(1)).** The Plan Administrator will distribute Gap Period income allocated on Excess Deferrals as to Excess Deferrals occurring in the Taxable Year and in later Taxable Years (Specify a Taxable Year before 2008) .
- (2) **Early application of Gap Period income to Excess Contributions/Aggregates (4.11(C)(2)).** The Plan Administrator will distribute Gap Period income allocated on Excess Contributions and Excess Aggregate Contributions occurring in the Plan Year and in later Plan Years (Specify a Plan Year before the Final 401(k) Regulations Effective Date) .
- (f) **Vesting (Article V) overrides.** (Choose one or more of (1) through (6) as applicable) :
- (1) **Application of top-heavy vesting to Matching (5.03(A)(1)).** The Employer makes the following elections regarding the application of top-heavy vesting to its Regular Matching and Additional Matching Contributions (Choose one or both of a. and b.) :
- a. **Post-EGTRRA Matching only.** Apply top-heavy vesting only to such post-2001 Plan Year Matching Contributions.
- b. **Waiver of Hour of Service requirement.** Apply top-heavy vesting as under the basic plan or as modified by Election 54(f)(1)a. to all Participants even if they did not have an Hour of Service in any post-2001 Plan Year.
- (2) **Alternative “grossed-up” vesting formula (5.03(C)(2)).** The Employer elects the alternative vesting formula described in Section 5.03(C)(2).
- (3) **Source of Cash-Out forfeiture restoration (5.04(B)(5)).** To restore a Participant’s Account Balance as described in Section 5.04(B)(5), the Plan Administrator, to the extent necessary, will allocate from the following source(s) and in the following order (Specify, in order, one or more of the following: Forfeitures, Earnings, and/or Employer Contribution) :
- (4) **Deemed Cash-Out of 0% Vested Participant (5.04(C)).** The deemed cash-out rule of Section 5.04(C) does not apply to the Plan.

- (5) **Accounting for Cash-Out repayment; Contribution Type (5.04(D)(2)).** In lieu of the accounting described in Section 5.04(D)(2), the Plan Administrator will account for a Participant's Account Balance attributable to a Cash-Out repayment: *(Choose one of a. or b.)* :
- a. **Nonelective rule.** Under the nonelective rule.
- b. **Rollover rule.** Under the rollover rule.
- (6) **One-year hold-out rule — vesting (5.06(D)).** The one-year hold-out Break in Service rule under Code §411(a)(6)(B) applies.
- (g) **Distribution (Article VI) overrides.** *(Choose one or more of (1) through (7) as applicable)* :
- (1) **Election of 5-year rule (6.02(B)(1)(e)).** Under Section 6.02(B)(1)(e) relating to death before the RBD, if a Designated Beneficiary does not make a timely election, the 5-year rule applies in lieu of the Life Expectancy rule.
- (2) **2002 only special Effective Date for Section 6.02 (6.02(D)(4)).** For the 2002 DCY only, the Plan Administrator will apply the RMD rules in effect under *(Choose one of a. or b.)* :
- a. **1987 proposed regulations.** The 1987 proposed Treasury regulations under Code §401(a)(9).
- b. **2001 proposed regulations.** The 2001 proposed Treasury regulations under Code §401(a)(9).
- (3) **RBD definition (6.02(E)(7)(e)).** In lieu of the RBD definition in Section 6.02(E)(7)(a) and (b), the Plan Administrator *(Choose one of a. or b.)* :
- a. **SBJPA definition indefinitely.** Indefinitely will apply the pre-SBJPA RBD definition.
- b. **SBJPA definition to specified date.** Will apply the pre-SBJPA definition until _____ *(the stated date may not be earlier than January 1, 1997)*, and thereafter will apply the RBD definition in Sections 6.02(E)(7)(a) and (b).
- (4) **Modification of QJSA (6.04(A)(3)).** The Survivor Annuity percentage will be _____ % *(Specify a percentage between 50% and 100%)*.
- (5) **Modification of QPSA (6.04(B)(2)).** The QPSA percentage will be _____ % *(Specify a percentage between 50% and 100%)*.
- (6) **Restriction on hardship source; grandfathering (6.07(E)).** The hardship distribution limit includes grandfathered amounts.
- (7) **Replacement of \$5,000 amount (6.09).** All Plan references (except in Sections 3.02(D), 3.10 and 3.12(C)(2)) to "\$5,000" will be \$ _____ *(Specify an amount less than \$5,000.)*
- (h) **Administrative, Trust and insurance overrides (Articles VII, VIII and IX).** *(Choose one or more of (1) through (9) as applicable)* :
- (1) **Contributions prior to accrual or precise determination (7.04(B)(5)(b)).** The Plan Administrator will allocate Earnings described in Section 7.04(B)(5)(b) as follows *(Choose one of a., b., or c.)* :
- a. **Treat as contribution.** Treat the Earnings as an Employer Matching or Nonelective Contribution and allocate accordingly.
- b. **Balance forward.** Allocate the Earnings using the balance forward method described in Section 7.04(B)(4)(b).
- c. **Weighted average.** Allocate the Earnings on Matching Contributions using the weighted average method in a manner similar to the method described in Section 7.04(B)(4)(d).
- (2) **Automatic revocation of spousal designation (7.05(A)(1)).** The automatic revocation of a spousal Beneficiary designation in the case of divorce or legal separation does not apply.
- (3) **Limitation on frequency of Beneficiary designation changes (7.05(A)(4)).** Except in the case of a Participant incurring a major life event, a period of at least _____ must elapse between Beneficiary designation changes. *(Specify a period of time, e.g., 90 days OR 12 months.)*
- (4) **Definition of "spouse" (7.05(A)(5)).** The following definition of "spouse" applies: _____ *(Specify a definition consistent with Applicable Law.)*
- (5) **Administration of default provision; default Beneficiaries (7.05(C)).** The following list of default Beneficiaries will apply: _____ *(Specify, in order, one or more Beneficiaries who will receive the interest of a deceased Participant.)*
- (6) **Subsequent restoration of forfeiture-sources and ordering (7.07(A)(3)).** Restoration of forfeitures will come from the following sources, in the following order _____ *(Specify, in order, one or more of the following: Forfeitures, Employer Contribution, Trust Fund Earnings.)*

- (7) **State law (7.10(H)).** The law of the following state will apply: _____ . (Specify one of the 50 states or the District of Columbia, or other appropriate legal jurisdiction, such as a territory of the United States or an Indian tribal government.)
- (8) **Employer securities/real property in Profit Sharing Plans/401(k) Plans (8.02(A)(13)(a)).** The Plan limit on investment in qualifying Employer securities/real property is _____ % . (Specify a percentage which is less than 100%.)
- (9) **Provisions relating to insurance and insurance company (9.08).** The following provisions apply: _____ (Specify such language as necessary to accommodate life insurance Contracts the Plan holds.)

[Note: The provisions in this Election 54(h)(9) may override provisions in Article IX of the Plan, but must be consistent with all other provisions of the Plan and Applicable Law.]

- (i) **Code Sections 415/416 (Article XI) override (11.02(A)(1)).** Because of the required aggregation of multiple plans, to satisfy Code §§415 and/or 416, the following overriding provisions apply: _____ . (Specify such language as necessary to satisfy §§415 and 416.)

APPENDIX C
LIST OF GROUP TRUST FUNDS/PERMISSIBLE TRUST AMENDMENTS

55. **INVESTMENT IN GROUP TRUST FUND (8.09)** . The nondiscretionary Trustee, as directed or the discretionary Trustee acting without direction (and in addition to the discretionary Trustee's authority to invest in its own funds under Section 8.02(A)(3)), may invest in any of the following group trust funds: . (Specify the names of one or more group trust funds in which the Plan can invest) .

[Note: A discretionary or nondiscretionary Trustee also may invest in any group trust fund authorized by an independent Named Fiduciary.]

56. **PERMISSIBLE TRUST AMENDMENTS (8.11)** . The Employer makes the following amendments to the Trust as permitted under Rev. Proc. 2005-16, Section 5.09 (Choose one or more of (a) through (c) as applicable) :

[Note: Any amendment under this Election 56 must not: (i) conflict with any Plan provision unrelated to the Trust or Trustee; or (ii) cause the Plan to violate Code §401(a). The amendment may override, add to, delete or otherwise modify the Trust provisions. Do not use this Election 56 to substitute another pre-approved trust for the Trust. See Election 5(c) as to a substitute trust.]

(a) **Investments.** The Employer amends the Trust provisions relating to Trust investments as follows:

(b) **Duties.** The Employer amends the Trust provisions relating to Trustee (or Custodian) duties as follows:

(c) **Other administrative provisions.** The Employer amends the other administrative provisions of the Trust as follows:

APPENDIX D
TABLE I: ACTUARIAL FACTORS
 UP-1984
 Without Setback

Number of years from attained age at the end of Plan Year until Normal Retirement Age	7.50%	8.00%	8.50%
0	8.458	8.196	7.949
1	7.868	7.589	7.326
2	7.319	7.027	6.752
3	6.808	6.506	6.223
4	6.333	6.024	5.736
5	5.891	5.578	5.286
6	5.480	5.165	4.872
7	5.098	4.782	4.491
8	4.742	4.428	4.139
9	4.412	4.100	3.815
10	4.104	3.796	3.516
11	3.817	3.515	3.240
12	3.551	3.255	2.986
13	3.303	3.014	2.752
14	3.073	2.790	2.537
15	2.859	2.584	2.338
16	2.659	2.392	2.155
17	2.474	2.215	1.986
18	2.301	2.051	1.831
19	2.140	1.899	1.687
20	1.991	1.758	1.555
21	1.852	1.628	1.433
22	1.723	1.508	1.321
23	1.603	1.396	1.217
24	1.491	1.293	1.122
25	1.387	1.197	1.034
26	1.290	1.108	0.953
27	1.200	1.026	0.878
28	1.116	0.950	0.810
29	1.039	0.880	0.746
30	0.966	0.814	0.688
31	0.899	0.754	0.634
32	0.836	0.698	0.584
33	0.778	0.647	0.538
34	0.723	0.599	0.496
35	0.673	0.554	0.457
36	0.626	0.513	0.422
37	0.582	0.475	0.389
38	0.542	0.440	0.358
39	0.504	0.407	0.330
40	0.469	0.377	0.304
41	0.436	0.349	0.280
42	0.406	0.323	0.258
43	0.377	0.299	0.238
44	0.351	0.277	0.219
45	0.327	0.257	0.202

Note: A Participant's Actuarial Factor under Table I is the factor corresponding to the number of years until the Participant reaches his/her Normal Retirement Age under the Plan. A Participant's age as of the end of the current Plan Year is his/her age on his/her last birthday. For any Plan Year beginning on or after the Participant's attainment of Normal Retirement Age, the factor for "zero" years applies.

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APPENDIX D
TABLE II: ADJUSTMENT TO ACTUARIAL FACTORS FOR NORMAL RETIREMENT AGE
OTHER THAN 65
 UP-1984
 Without Setback

<u>Normal Retirement Age</u>	7.50%	8.00%	8.50%
55	1.2242	1.2147	1.2058
56	1.2043	1.1959	1.1879
57	1.1838	1.1764	1.1694
58	1.1627	1.1563	1.1503
59	1.1411	1.1357	1.1305
60	1.1188	1.1144	1.1101
61	1.0960	1.0925	1.0891
62	1.0726	1.0700	1.0676
63	1.0488	1.0471	1.0455
64	1.0246	1.0237	1.0229
65	1.0000	1.0000	1.0000
66	0.9752	0.9760	0.9767
67	0.9502	0.9518	0.9533
68	0.9251	0.9274	0.9296
69	0.8998	0.9027	0.9055
70	0.8740	0.8776	0.8810
71	0.8478	0.8520	0.8561
72	0.8214	0.8261	0.8307
73	0.7946	0.7999	0.8049
74	0.7678	0.7735	0.7790
75	0.7409	0.7470	0.7529
76	0.7140	0.7205	0.7268
77	0.6874	0.6942	0.7008
78	0.6611	0.6682	0.6751
79	0.6349	0.6423	0.6494
80	0.6090	0.6165	0.6238

Note: Use Table II only if the Normal Retirement Age for any Participant is not 65. If a Participant's Normal Retirement Age is not 65, adjust Table I by multiplying *all* factors applicable to that Participant in Table I by the appropriate Table II factor.

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AMENDMENT FOR THE FINAL 415 REGULATIONS

ARTICLE I
PREAMBLE

- 1.1 **Effective date of Amendment.** This Amendment is effective for limitation years and plan years beginning on or after July 1, 2007, except as otherwise provided herein.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer's election.** The Employer adopts all Articles of this Amendment, except those Articles that the Employer specifically elects not to adopt.
- 1.4 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.5 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates the final Code §415 Regulation provisions).
- 1.6 **Adoption by prototype sponsor.** Except as otherwise provided herein, pursuant to the provisions of the Plan and Section 5.01 of Revenue Procedure 2005-16, the sponsor hereby adopts this Amendment on behalf of all adopting employers.

ARTICLE II
EMPLOYER ELECTIONS

The Employer only needs to complete the questions in Section 2.2 in order to override the default provisions set forth below. If the Plan will use all of the default provisions, then these questions should be skipped and the Employer does not need to execute this amendment.

- 2.1 **Default Provisions.** Unless the Employer elects otherwise in Section 2.2, the following defaults will apply:
- a. The provisions of the Plan setting forth the definition of compensation for purposes of Code §415 (hereinafter referred to as "415 Compensation"), as well as compensation for purposes of determining highly compensated employees pursuant to Code §414(g) and for top-heavy purposes under Code §416 (including the determination of key employees), shall be modified by (1) including payments for unused sick, vacation or other leave and payments from nonqualified unfunded deferred compensation plans (Amendment Section 3.2(b)), (2) excluding salary continuation payments for participants on military service (Amendment Section 3.2(c)), and (3) excluding salary continuation payments for disabled participants (Amendment Section 3.2(d)).
 - b. The "first few weeks rule" does not apply for purposes of 415 Compensation (Amendment Section 3.3).
 - c. The provision of the Plan setting forth the definition of compensation for allocation purposes (hereinafter referred to as "Plan Compensation") shall be modified to provide for the same adjustments to Plan Compensation (for all contribution types) that are made to 415 Compensation pursuant to this Amendment.
- 2.2 **In lieu of default provisions.** In lieu of the default provisions above, the following apply: (select all that apply; if no selections are made, then the defaults apply)
- 415 Compensation.** (select all that apply):
- a. Exclude leave cashouts and deferred compensation (Section 3.2(b))
 - b. Include military continuation payments (Section 3.2(c))
 - c. Include disability continuation payments (Section 3.2(d)):
 1. For Nonhighly Compensated Employees only
 2. For all participants and the salary continuation will continue for the following fixed or determinable period:
 - d. Apply the administrative delay ("first few weeks") rule (Section 3.3)

Plan Compensation. (select all that apply):

NOTE: Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals and Employee Contributions, Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions. For all Plans other than 401(k) plans, only use column 1. or column 4. in the table below.

NOTE: Under the GUST PPD document, the plan excludes all post-severance compensation unless the Employer had elected otherwise in its adoption agreement.

	All		Elective Deferrals	Matching	Nonelective
e. <input type="checkbox"/> Default provisions apply	1. N/A	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
f. <input type="checkbox"/> No change from existing Plan provisions	1. <input type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
g. <input type="checkbox"/> Exclude all post-severance compensation	1. <input type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
h. <input type="checkbox"/> Exclude post-severance regular pay	1. <input type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
i. <input checked="" type="checkbox"/> Exclude leave cashouts and deferred compensation	1. <input checked="" type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
j. <input checked="" type="checkbox"/> Include post-severance military continuation payments	1. <input checked="" type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
k. <input type="checkbox"/> Include post-severance disability continuation payments:	1. <input type="checkbox"/>	OR	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>
a. <input type="checkbox"/> For Nonhighly Compensated Employees only					
b. <input type="checkbox"/> For all participants and the salary continuation will continue for the following fixed or determinable period:					
l. <input type="checkbox"/> Other (describe)					

Plan Compensation Special Effective Date. The definition of Plan Compensation is modified as set forth herein effective as of the same date as the 415 Compensation change is effective unless otherwise specified:
m. (enter the effective date)

**ARTICLE III
FINAL SECTION 415 REGULATIONS**

- 3.1 **Effective date.** The provisions of this Article III shall apply to limitation years beginning on and after July 1, 2007.
- 3.2 **415 Compensation paid after severance from employment.** 415 Compensation shall be adjusted, as set forth herein and as otherwise elected in Article II, for the following types of compensation paid after a Participant's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code §414(b), (c), (m) or (o)). However, amounts described in subsections (a) and (b) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code §415(c)(3), even if payment is made within the time period specified above.
- (a) **Regular pay.** 415 Compensation shall include regular pay after severance of employment if:
- (1) The payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
 - (2) The payment would have been paid to the participant prior to a severance from employment if the participant had continued in employment with the Employer.

- (b) **Leave cashouts and deferred compensation.** Leave cashouts shall be included in 415 Compensation, unless otherwise elected in Section 2.2 of this Amendment, if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in 415 Compensation, unless otherwise elected in Section 2.2 of this Amendment, if the compensation would have been included in the definition of 415 Compensation if it had been paid prior to the participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the participant had continued in employment with the Employer and only to the extent that the payment is includible in the participant's gross income.
- (c) **Salary continuation payments for military service participants.** 415 Compensation does not include, unless otherwise elected in Section 2.2 of this Amendment, payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.
- (d) **Salary continuation payments for disabled Participants.** Unless otherwise elected in Section 2.2 of this Amendment, 415 Compensation does not include compensation paid to a participant who is permanently and totally disabled (as defined in Code §22(e)(3)). If elected, this provision shall apply to either just non-highly compensated participants or to all participants for the period specified in Section 2.2 of this Amendment.
- 3.3 **Administrative delay ("the first few weeks") rule.** 415 Compensation for a limitation year shall not include, unless otherwise elected in Section 2.2 of this Amendment, amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates. However, if elected in Section 2.2 of this Amendment, 415 Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated participants, and no compensation is included in more than one limitation year.
- 3.4 **Inclusion of certain nonqualified deferred compensation amounts.** If the Plan's definition of Compensation for purposes of Code §415 is the definition in Regulation Section 1.415(c)-2(b) (Regulation Section 1.415-2(d)(2) under the Regulations in effect for limitation years beginning prior to July 1, 2007) and the simplified compensation definition of Regulation 1.415(c)-2(d)(2) (Regulation Section 1.415-2(d)(10) under the Regulations in effect for limitation years prior to July 1, 2007) is not used, then 415 Compensation shall include amounts that are includible in the gross income of a Participant under the rules of Code §409A or Code §457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the Plan's definition of Compensation is W-2 wages or wages for withholding purposes, then these amounts are already included in Compensation.]
- 3.5 **Definition of annual additions.** The Plan's definition of "annual additions" is modified as follows:
- (a) **Restorative payments.** Annual additions for purposes of Code §415 shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under ERISA or under other applicable federal or state law, where participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under ERISA are not restorative payments and generally constitute contributions that are considered annual additions.
- (b) **Other Amounts.** Annual additions for purposes of Code §415 shall not include: (1) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (2) Rollover contributions (as described in Code §§401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (3) Repayments of loans made to a participant from the Plan; and (4) Repayments of amounts described in Code §411(a)(7)(B) (in accordance with Code §411(a)(7)(C) and Code §411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code §414(d)) as described in Code §415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.
- (c) **Date of tax-exempt Employer contributions.** Notwithstanding anything in the Plan to the contrary, in the case of an Employer that is exempt from Federal income tax (including a governmental employer), Employer contributions are treated as credited to a participant's account for a particular limitation year only if the contributions are actually made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the employer keeps its books) with or within which the particular limitation year ends.

- 3.6 **Change of limitation year.** The limitation year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.
- 3.7 **Excess Annual Additions.** Notwithstanding any provision of the Plan to the contrary, if the annual additions (within the meaning of Code §415) are exceeded for any participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2006-27 or any superseding guidance, including, but not limited to, the preamble of the final §415 regulations.
- 3.8 **Aggregation and Disaggregation of Plans.**
- (a) For purposes of applying the limitations of Code §415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor employer") under which the participant receives annual additions are treated as one defined contribution plan. The "Employer" means the Employer that adopts this Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code §§414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code §415(h), and shall take into account tax-exempt organizations under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:
- (1) A former Employer is a "predecessor employer" with respect to a participant in a plan maintained by an Employer if the Employer maintains a plan under which the participant had accrued a benefit while performing services for the former Employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1 (b)(2) apply as if the Employer and predecessor Employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.
- (2) With respect to an Employer of a participant, a former entity that antedates the Employer is a "predecessor employer" with respect to the participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.
- (b) **Break-up of an affiliate employer or an affiliated service group.** For purposes of aggregating plans for Code §415, a "formerly affiliated plan" of an employer is taken into account for purposes of applying the Code §415 limitations to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Section 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).
- (c) **Midyear Aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code §415(f) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code §415 with respect to a participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the participant's account after the date on which the plans are required to be aggregated.

**ARTICLE IV
PLAN COMPENSATION**

- 4.1 **Compensation limit.** Notwithstanding Amendment Section 4.2 or any election in Amendment Section 2.2, if the Plan is a 401(k) plan, then participants may not make elective deferrals with respect to amounts that are not 415 Compensation. However, for this purpose, 415 Compensation is not limited to the annual compensation limit of Code §401(a)(17).
- 4.2 **Compensation paid after severance from employment.** Compensation for purposes of allocations (hereinafter referred to as Plan Compensation) shall be adjusted, unless otherwise elected in Amendment Section 2.2, in the same manner as 415 Compensation pursuant to Article III of this Amendment if those amounts would have been included in Compensation if they were paid prior to the Participant's severance from employment, except in applying Article III, the term "limitation year" shall be replaced with the term "plan year" and the term "415 Compensation" shall be replaced with the term "Plan Compensation."

4.3 **Option to apply Plan Compensation provisions early.** The provisions of this Article shall apply for Plan Years beginning on and after July 1, 2007, unless another effective date is specified in Section 2.2 of this Amendment.

Except with respect to any election made by the employer in Section 2.2, this amendment is hereby adopted by the prototype sponsor on behalf of all adopting employers on:

[Sponsor's signature and Adoption Date are on file with Sponsor]

Sponsor Name: Wells Fargo Bank, N.A.

NOTE: The Employer only needs to execute this Amendment if an election has been made in Section 2.2 of this Amendment.

This amendment has been executed this 12th day of December, 2011.

Name of Plan: LKQ Corporation Employees' Retirement Plan

Name of Employer: LKQ Corporation

By: /s/ Walter Hanley
EMPLOYER

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**PPD ADOPTION AGREEMENT
ADMINISTRATIVE CHECKLIST**
January 1, 2012

This Administrative Checklist ("AC") is not part of the Adoption Agreement or Plan but is for the use of the Plan Administrator in administering the Plan. Relius software also uses the AC and the following Supporting Forms Checklist ("SFC") in preparing the Plan's SPD and some administrative forms, such as the Loan Policy, if applicable.

The plan document preparer need not complete the AC but may find it useful to do so. The preparer may modify the AC, including adding items, without affecting reliance on the Plan's opinion or advisory letter since the AC is not part of the approved Plan. Any change to this AC is not a Plan amendment and is not subject to any Plan provision or to Applicable Law regarding the timing or form of Plan amendments. However, the Plan Administrator's administration of any AC item must be in accordance with applicable Plan terms and with Applicable Law.

The AC reflects the Plan policies and operation as of the date set forth above and may also reflect Plan policies and operation pre-dating the specified date.

AC1. PLAN LOANS (7.06). The Plan permits or does not permit Participant Loans as follows (Choose one of (a) or (b)) :

- (a) **Does not permit.**
 (b) **Permitted pursuant to the Loan Policy.** See SFC Election 69 to complete Loan Policy.

AC2. PARTICIPANT DIRECTION OF INVESTMENT (7.03(B)). The Plan permits Participant direction of investment or does not permit Participant direction of investment as to some or all Accounts as follows (Choose one of (a) or (b)) :

- (a) **Does not permit.** The Plan does not permit Participant direction of investment of any Account.
 (b) **Permitted as follows.** The Plan permits Participant direction of investment. (Complete (1) through (4)) :
- (1) **Accounts affected.** (Choose a. or choose one or more of b. through f.) :
- a. **All Accounts.**
 b. **Elective Deferral Accounts (Pre-tax and Roth) and Employee Contributions.**
 c. **All Nonelective Contribution Accounts.**
 d. **All Matching Contribution Accounts.**
 e. **All Rollover Contribution and Transfer Accounts.**
 f. **Specify Accounts:**
- (2) **Restrictions on Participant direction** (Choose one of a. or b.) :
- a. **None.** Provided the investment does not result in a prohibited transaction, give rise to UBTI, create administrative problems or violate the Plan terms or Applicable Law.
 b. **Restrictions:**
- (3) **ERISA §404(c).** (Choose one of a. or b.) :
- a. **Applies.**
 b. **Does not apply.**
- (4) **QDIA (Qualified Default Investment Alternative).** (Choose one of a. or b.) :
- a. **Applies.** See SFC Election 110 for details.
 b. **Does not apply.**

AC3. ROLLOVER CONTRIBUTIONS (3.08). The Plan permits or does not permit Rollover Contributions as follows (Choose one of (a) or (b)) :

- (a) **Does not permit.**
 (b) **Permits.** Subject to approval by the Plan Administrator and as further described below (Complete (1) and (2)) :
- (1) **Who may roll over.** (Choose one of a. or b.) :
- a. **Participants only.**
 b. **Eligible Employees or Participants.**
- (2) **Sources/Types.** The Plan will accept a Rollover Contribution (Choose one of a. or b.) :
- a. **All.** From any Eligible Retirement Plan and as to all Contribution Types eligible to be rolled into this Plan.
 b. **Limited.** Only from the following types of Eligible Retirement Plans and/or as to the following Contribution Types:

AC4. PLAN EXPENSES (7.04(C)). The Employer will pay or the Plan will be charged with non-settlor Plan expenses as follows (Choose one of (a) or (b)) :

- (a) **Employer pays all expenses except those intrinsic to Trust assets which the Plan will pay (e.g., brokerage commissions).**
 (b) **Plan pays some or all non-settlor expenses.** See SFC Election 126 for details.

AC5. RELATED AND PARTICIPATING EMPLOYERS (1.23(C)(D)). There are or are not Related Employers and Participating Employers as follows (Complete (a) through (c)) :

- (a) **Related Employers.** (Choose one of (1) or (2)) :
 - (1) **None.**
 - (2) **Name(s) of Related Employers:** See attached listing
- (b) **Participating (Related) Employers.** (Choose one of (1) or (2)) :
 - (1) **None.**
 - (2) **Name(s) of Participating Employers:** See attached listing See SFC Election 71 for details.
- (c) **Former Participating Employers.** (Choose one of (1) or (2)) :
 - (1) **None.**
 - (2) **Applies.**

Name(s)	Date of cessation
_____	_____
_____	_____

AC6. TOP-HEAVY MINIMUM-MULTIPLE PLANS (10.03). If the Employer maintains another plan, this Plan provides that the Plan Administrator operationally will determine in which plan the Employer will satisfy the Top-Heavy Minimum Contribution (or benefit) requirement as to Non-Key Employees who participate in such plans and who are entitled to a Top-Heavy Minimum Contribution (or benefit). This Election documents the Plan Administrator's operational election. (Choose (a) or choose one of (b) or (c)) :

- (a) **Does not apply.**
- (b) **If only another Defined Contribution Plan.** Make the Top-Heavy Minimum Allocation (Choose one of (1) or (2)) :
 - (1) **To this Plan.**
 - (2) **To another Defined Contribution Plan:** (plan name)
- (c) **If one or more Defined Benefit Plans.** Make the Top-Heavy Minimum Allocation or provide the top-heavy minimum benefit (Choose one of (1), (2), or (3)) :
 - (1) **To this Plan.** Increase the Top-Heavy Minimum Allocation to 5%.
 - (2) **To another Defined Contribution Plan.** Increase the Top-Heavy Minimum Allocation to 5% and provide under the: (name of other Defined Contribution Plan).
 - (3) **To a Defined Benefit Plan.** Provide the 2% top-heavy minimum benefit under the: (name of Defined Benefit Plan) and applying the following interest rate and mortality assumptions: .

AC7. SELF-EMPLOYED PARTICIPANTS (1.21(A)). One or more self-employed Participants with Earned Income benefits in the Plan as follows (Choose one of (a) or (b)) :

- (a) **None.**
- (b) **Applies.**

AC8. PROTECTED BENEFITS (11.02(C)). The following Protected Benefits no longer apply to all Participants or do not apply to designated amounts/Participants as indicated, having been eliminated by a Plan amendment (Choose one of (a) or (b)) :

- (a) **Does not apply.** No Protected Benefits have been eliminated.
- (b) **Applies.** Protected Benefits have been eliminated as follows (Choose one or more of rows (1) through (4) as applicable. Choose one of columns (1), (2), or (3), and complete column (4)) :

	(1) All Participants/ Accounts	(2) Post-E.D. Contribution Accounts only	(3) Post-E.D. Participants only	(4) Effective Date (E.D.)
(1) <input type="checkbox"/> QJSA/QPSA distributions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(2) <input type="checkbox"/> Installment distributions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(3) <input type="checkbox"/> In-kind distributions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(4) <input type="checkbox"/> Specify:				

AC9. LIFE INSURANCE (9.01). The Trust invests or does not invest in life insurance Contracts as follows (Choose one of (a) or (b)) :

- (a) **Does not apply.**
- (b) **Applies.** Subject to the limitations and other provisions in Article IX and/or Appendix B.

AC10. DISTRIBUTION OF CASH OR PROPERTY (8.04). The Plan provides for distribution in the form of (Choose one of (a) or (b)) :

- (a) **Cash only.** Except where property distribution is required or permitted under Section 8.04.
- (b) **Cash or property.** At the distributee's election and consistent with any Plan Administrator policy under Section 8.04.

AC11. EMPLOYER SECURITIES/EMPLOYER REAL PROPERTY (8.02(A)(13)). The Trust invests or does not invest in qualifying Employer securities and/or qualifying Employer real property as follows (Choose one of (a) or (b)) :

- (a) **Does not apply.**
- (b) **Applies.** Such investments are subject to the limitations of Section 8.02(A)(13) and/or Appendix B.

PARTICIPATION AGREEMENT (1.23(D))

[Note: Each Participating Employer must execute a separate Participation Agreement, the terms of which control as to that Participating Employer.]

Agreement as to Signatory Employer control. The undersigned Related Employer, by executing this Participation Agreement, elects to become a Participating Employer in the Plan identified in the foregoing Adoption Agreement. The Participating Employer accepts, and agrees to be bound by, all of the Elections as made by the Signatory Employer except as otherwise indicated below. *The Participating Employer also hereby consents to the Signatory Employer's sole authority (without further signature or other action by the Participating Employer) to amend, to restate or to terminate the Plan, to terminate the Participating Employer's participation in the Plan, and to take certain other actions, in accordance with Section 1.23(A).*

Effective Date(s). (Choose one) :

- New Plan.** The Participating Employer's adoption of this Plan is as a new Plan, effective on: _____
- Restated Plan.** The Participating Employer's adoption of this Plan is as a restated Plan. The restated Effective Date as to the Participating Employer is: January 1, 2012 . The Plan as to the Participating Employer was originally effective on: _____

[Note: If the Participating Employer is adopting this Plan as an EGTRRA restated Plan, the restated Effective Date should be the beginning of the 2002 Plan Year or the Participating Employer's original Effective Date, whichever is later. Where the Participating Employer is restating its Plan, the Participating Employer should execute this Participation Agreement even if the prior version of the Plan accorded to the Signatory Employer the authority to make Plan amendments on behalf of Participating Employers without Participating Employer signature or approval.]

Different elections or special Effective Dates. (Choose one) :

- None.** There are no different elections or special Effective Dates which apply to the Participating Employer.

[Note: The Employer should elect "none" above only if the Adoption Agreement elections and Effective Dates (other than above in this Participation Agreement) are the same for the Participating Employer and the Signatory Employer. If different elections or Effective Dates apply, the Employer should elect "applies" below.]

- Applies.** As to the Participating Employer, the following elections apply (or do not apply) which are different (or have different Effective Dates) than the elections applicable to the Signatory Employer:

Election number	Applies	Does not apply	Completion of election blanks-as necessary	Effective Date
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

Participating Employer: See attached listing of Participating Employers

Date: December 12, 2011

Signed: /s/ Walter P. Hanley

Walter P. Hanley, Secretary

[print name/title]

Participating Employer's EIN: See attached Participating Employers (EIN)

Acceptance by Signatory Employer and Trustee/Custodian.

Signatory Employer: LKQ Corporation

Date: December 12, 2011

Signed: /s/ Walter Hanley

Senior VP, Walter Hanley

[print name/title]

Trustee(s)/Custodian(s): Wells Fargo Bank, N.A.

Date: December 13, 2011

Signed: /s/ Donna K. Dickinson

Donna Dickinson, Vice President and Relationship Manager

[print name/title]

ADOPTING RESOLUTION

The undersigned authorized representative of See attached listing of Participating Employers (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on December 12, 2011, and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the form of the Participation Agreement of See attached listing of Participating Employers, a Participating Employer, which evidences the adoption of the amended 401(k) Profit Sharing Plan and Trust sponsored by LKQ Corporation, the Signatory Employer, is hereby approved and adopted and that an authorized representative of the Participating Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Participation Agreement.

RESOLVED, that the Signatory Employer retains sole authority to amend, to restate or to terminate the Plan, to terminate the Participating Employer's participation in the Plan, and to take certain other actions, in accordance with Section 1.23(A), without further signature or other action by the Participating Employer.

Participating Employer: See attached listing of Participating Employers

Date: December 16, 2011

Signed: /s/ Walter P. Hanley

Walter P. Hanley, Secretary

[print name/title]

AMENDMENT FOR PENSION PROTECTION ACT AND HEART ACT

ARTICLE I
PREAMBLE

- 1.1 **Effective date of Amendment.** The Employer, or if applicable, the sponsor on behalf of the Employer, adopts this Amendment to the Plan to reflect recent law changes. This Amendment is effective as indicated below for the respective provisions.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer's election.** The Employer adopts all the default provisions of this Amendment except as otherwise elected in Article II.
- 1.4 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.5 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates PPA provisions).
- 1.6 **Adoption by prototype sponsor.** Except as otherwise provided herein, pursuant to the provisions of the Plan and Section 5.01 of Revenue Procedure 2005-16, the sponsor hereby adopts this Amendment on behalf of all adopting employers. The adoption by the sponsor becomes applicable with respect to an adopting Employer's Plan as of the last day of the first Plan Year beginning after December 31, 2008, unless the Employer individually adopts this Amendment, or an alternative amendment, prior to such date.

ARTICLE II
EMPLOYER ELECTIONS

The Employer only needs to complete the questions in Sections 2.2 through 2.7 below in order to override the default provisions set forth below. If the Plan will use all of the default provisions, then these questions should be skipped and the Employer does not need to execute this Amendment.

- 2.1 **Default Provisions.** Unless the Employer elects otherwise in this Article, the following defaults will apply:
- a. **If the Plan has a vesting schedule for nonelective contributions that does not meet the Pension Protection Act of 2006 (PPA), then the vesting schedule for any Employer nonelective contributions for Participants who complete an Hour of Service in a Plan Year beginning after December 31, 2006, will be the schedule below. Such schedule will apply to all nonelective contributions, even those made prior to January 1, 2007.**

If the Plan has a graded vesting schedule (i.e., the vesting schedule includes a vested percentage that is more than 0% and less than 100%), then the vesting schedule will be a 6-year graded schedule (20% after 2 years of vesting service and an additional 20% for each year thereafter).

If the Plan has a cliff vesting schedule that requires more than 3 years of vesting service, then nonelective contributions will be nonforfeitable upon the completion of 3 years of vesting service.
 - b. **Nonspousal beneficiary rollovers are allowed effective for distributions made after 12/31/06.**
 - c. **Hardship distributions for expenses of a beneficiary are not allowed.**
 - d. **The option to permit in-service distributions at age 62 (with respect to amounts attributable to a money purchase pension plan, target benefit plan, or any other defined contribution plan that has received a transfer of assets from a pension plan) is not adopted.**
 - e. **Qualified Reservist Distributions are not allowed.**
 - f. **Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided.**
- 2.2 **Vesting** (Article III). The default vesting schedule applies unless a. is elected below.
- a. In lieu of the above default vesting provisions, the employer elects the following schedule:
 1. 3 year cliff (a Participant's accrued benefit derived from employer nonelective contributions is nonforfeitable upon the Participant's completion of three years of vesting service).

2. 6 year graded schedule (20% after 2 years of vesting service and an additional 20% for each year thereafter).
3. Other (must be at least as liberal as 1. or 2. above at each point in time):

Years of vesting service

Nonforfeitable percentage

%
 %
 %
 %
 %

The vesting schedule set forth herein only applies to Participants who complete an Hour of Service in a Plan Year beginning after December 31, 2006, and, unless b. is elected below, applies to **all** nonelective contributions subject to a vesting schedule.

- b. The vesting schedule will only apply to nonelective contributions made in Plan Years beginning after December 31, 2006 (the prior schedule will apply to nonelective contributions made in prior Plan Years).

2.3 **Non-spousal rollovers** (Article VII) . Non-spousal rollovers are allowed after December 31, 2006 unless a. is elected below (Article VII provides that such distributions are always allowed after December 31, 2009):

- a. Use the following instead of the default (select one):
1. Non-spousal rollovers are not allowed.
 2. Non-spousal rollovers are allowed effective (not earlier than January 1, 2007 and not later than January 1, 2010).

2.4 **Hardships** (Article VIII) . Hardship distributions for expenses of beneficiaries will not be allowed unless elected below:

- a. Hardship distributions are allowed for beneficiary expenses (See IRS Notice 2007-7) (applies only for 401(k) or profit sharing plans that allow hardship distributions) effective as of August 17, 2006 unless another date is elected below:
1. (may not be earlier than August 17, 2006).

2.5 **In-service distributions** (Article IX) . In-service distributions at age 62 will not be allowed (except as otherwise permitted under the Plan without regard to this Amendment) unless elected below:

- a. In-service distributions will be allowed for Participants at age 62 (generally applies only for money purchase (including target benefit) plans, but may apply to any other defined contribution plans that have received a transfer of assets from a pension plan) effective as of the first day of the 2007 Plan Year unless another date is elected below:
1. (may not be earlier than the first day of the 2007 Plan Year).

AND, the following limitations apply to in-service distributions:

2. The Plan already provides for in-service distributions and the restrictions set forth in the Plan (e.g., minimum amount of distributions or frequency of distributions) are applicable to in-service distributions at age 62.
3. N/A. No limitations.
4. The following elections apply to in-service distributions at age 62 (select all that apply):
 - a. The minimum amount of a distribution is \$ (may not exceed \$1,000).
 - b. No more than distribution(s) may be made to a Participant during a Plan Year.
 - c. Distributions may only be made from accounts which are fully Vested.
 - d. In-service distributions may be made subject to the following provisions: (must be definitely determinable and not subject to discretion).

2.6 **Qualified Reservist Distributions** (Article X) . Qualified Reservist distributions will not be allowed unless elected below:

- a. Qualified Reservist Distributions are allowed effective as of (may not be earlier than September 12, 2001).

2.7 **Continued benefit accruals** (Article XV) . Continued benefit accruals for the Heart Act (Amendment Section 15.2) will not apply unless elected below:

- a. The provisions of Amendment Section 15.2 apply.

**ARTICLE III
 NONELECTIVE CONTRIBUTION VESTING**

3.1 **Applicability.** This Article applies to Participants who complete an Hour of Service in a Plan Year beginning after December 31, 2006, with respect to accrued benefits derived from employer nonelective contributions made in Plan Years beginning after December 31, 2006. Unless otherwise elected by the employer in Amendment Section 2.2 above, this Article also will apply to all nonelective contributions subject to a vesting schedule, including nonelective contributions allocated under the Plan terms as of a date in a Plan Year beginning *before* January 1, 2007.

3.2 **Vesting schedule.** A Participant's accrued benefit derived from employer nonelective contributions vests as provided in Amendment Section 2.1.a, or if applicable, Amendment Section 2.2.

**ARTICLE IV
PARTICIPANT DISTRIBUTION NOTIFICATION**

- 4.1 **180-day notification period.** For any distribution notice issued in Plan Years beginning after December 31, 2006, any reference to the 90-day maximum notice period prior to distribution in applying the notice requirements of Code §§402(f) (the rollover notice), 411(a)(1) (Participant's consent to distribution), and 417 (notice under the joint and survivor annuity rules) will become 180 days.
- 4.2 **Notice of right to defer distribution.** For any distribution notice issued in Plan Years beginning after December 31, 2006, the description of a Participant's right, if any, to defer receipt of a distribution also will describe the consequences of failing to defer receipt of the distribution. For notices issued before the 90th day after the issuance of Treasury regulations (unless future Revenue Service guidance otherwise requires), the notice will include: (i) a description indicating the investment options available under the Plan (including fees) that will be available if the Participant defers distribution; and (ii) the portion of the summary plan description that contains any special rules that might affect materially a Participant's decision to defer.

**ARTICLE V
ROLLOVER OF AFTER-TAX/ROTH AMOUNTS**

- 5.1 **Direct rollover to qualified plan/403(b) plan.** For taxable years beginning after December 31, 2006, a Participant may elect to transfer employee (after-tax) or Roth elective deferral contributions by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

**ARTICLE VI
DIVESTMENT OF EMPLOYER SECURITIES**

- 6.1 **Rule applicable to elective deferrals and employee contributions.** For Plan Years beginning after December 31, 2006, if any portion of the account of a Participant (including, for purposes of this Article VI, a beneficiary entitled to exercise the rights of a Participant) attributable to elective deferrals or employee contributions is invested in publicly-traded Employer securities, the Participant may elect to direct the Plan to divest any such securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Section 6.3.
- 6.2 **Rule applicable to Employer contributions.** If any portion of a Participant's account attributable to nonelective or matching contributions is invested in publicly-traded Employer securities, then a Participant who has completed at least 3 years of vesting service, or a beneficiary of any deceased Participant entitled to exercise the right of a Participant, may elect to direct the Plan to divest any such securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Section 6.3.
- a. **Three-year phase-in applicable to Employer contributions.** For Employer securities acquired with nonelective or matching contributions during a Plan Year beginning before January 1, 2007, the rule described in this Section 6.2 only applies to the percentage of the Employer securities (applied separately for each class of securities) as follows:

Plan Year	Percentage
2007	33
2008	66
2009	100

- b. **Exception to phase-in for certain age 55 Participants.** The 3-year phase-in rule of Section 6.2.a does not apply to a Participant who has attained age 55 and who has completed at least 3 years of service before the first Plan Year beginning after December 31, 2005.
- 6.3 **Investment options.** For purposes of this Article VI, other investment options must include not less than 3 investment options, other than Employer securities, to which the Participant may direct the proceeds of divestment of Employer securities required by this Article VI, each of which options is diversified and has materially different risk and return characteristics. The Plan must provide reasonable divestment and reinvestment opportunities at least quarterly. Except as provided in regulations, the Plan may not impose restrictions or conditions on the investment of Employer securities which the Plan does not impose on the investment of other Plan assets, other than restrictions or conditions imposed by reason of the application of securities laws or a condition permitted under IRS Notice 2006-107 or other applicable guidance.
- 6.4 **Exceptions for certain plans.** This Article VI does not apply to a one-participant plan, as defined in Code §401(a)(35)(E)(iv), or to an employee stock ownership plan ("ESOP") if: (i) there are no contributions to the ESOP (or related earnings) attributable to elective deferrals or matching contributions; and (ii) the ESOP is a separate plan, for purposes of Code §414(i), from any other defined benefit plan or defined contribution plan maintained by the same employer or employers.

- 6.5 **Treatment as publicly traded Employer securities.** Except as provided in Treasury regulations or in Code §401(a)(35)(F)(ii) (relating to certain controlled groups), a plan holding Employer securities which are not publicly traded Employer securities is treated as holding publicly traded Employer securities if any Employer corporation, or any member of a controlled group of corporations which includes such Employer corporation (as defined in Code §401(a)(35)(F)(iii)) has issued a class of stock which is a publicly traded Employer security.

**ARTICLE VII
DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION**

- 7.1 **Non-spouse beneficiary rollover right.** For distributions after December 31, 2009, and unless otherwise elected in Section 2.3 of this Amendment, for distributions after December 31, 2006, a non-spouse beneficiary who is a "designated beneficiary" under Code §401(a)(9)(E) and the regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.
- 7.2 **Certain requirements not applicable.** Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 7.1, any distribution made prior to January 1, 2010 is not subject to the direct rollover requirements of Code §401(a)(31) (including Code §401(a)(31)(B), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c)). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.
- 7.3 **Trust beneficiary.** If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code §401(a)(9)(E).
- 7.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

**ARTICLE VIII
DISTRIBUTION BASED ON BENEFICIARY HARDSHIP**

- 8.1 **Beneficiary-based distribution.** If elected in Amendment Section 2.4.a, then beginning as of the date specified in such Section, a Participant's hardship event, for purposes of the Plan's safe harbor hardship distribution provisions pursuant to Treas. Reg. §1.401(k)-1(d)(3)(iii)(B), includes an immediate and heavy financial need of the Participant's primary beneficiary under the Plan, that would constitute a hardship event if it occurred with respect to the Participant's spouse or dependent as defined under Code §152 (such hardship events being limited to educational expenses, funeral expenses and certain medical expenses). For purposes of this Article, a Participant's "primary beneficiary under the Plan" is an individual who is named as a beneficiary under the Plan and has an unconditional right to all or a portion of the Participant's account balance under the Plan upon the Participant's death.

**ARTICLE IX
IN-SERVICE PENSION DISTRIBUTIONS**

- 9.1 **Age 62 distributions.** If elected in Amendment Section 2.5.a, then beginning as of the date specified in such Section, if the Plan is a money purchase pension plan, a target benefit plan, or any other defined contribution plan that has received a transfer of assets from a pension plan, a Participant who has attained age 62 and who has not separated from employment may elect to receive a distribution of his or her vested account balance (or in case of a transferee plan, of the transferred account balance).

**ARTICLE X
QUALIFIED RESERVIST DISTRIBUTION**

- 10.1 **401(k) distribution restrictions.** If elected in Amendment Section 2.6, then effective as of the date specified in such Section, the Plan permits a Participant to elect a Qualified Reservist Distribution, as defined in this Article X.
- 10.2 **Qualified Reservist Distribution defined.** A "Qualified Reservist Distribution" is any distribution to an individual who is ordered or called to active duty after September 11, 2001, if: (i) the distribution is from amounts attributable to elective deferrals in a 401(k) plan; (ii) the individual was (by reason of being a member of a reserve component, as defined in section 101 of title 37, United States Code) ordered or called to active duty for a period in excess of 179 days or for an indefinite period; and (iii) the Plan makes the distribution during the period beginning on the date of such order or call, and ending at the close of the active duty period.

**ARTICLE XI
OTHER 401(k)/401(m) PLAN PROVISIONS**

- 11.1 **Gap period income on distributed excess contributions and excess aggregate contributions.** This Section applies to excess contributions (as defined in Code §401(k)(8)(B)) and excess aggregate contributions (as defined in Code §401(m)(6)(B)) made with respect to Plan Years beginning after December 31, 2007. The Plan administrator will not calculate and distribute allocable income for the gap period (i.e., the period after the close of the Plan Year in which the excess contribution or excess aggregate contribution occurred and prior to the distribution).
- 11.2 **Gap period income on distributed excess deferrals.** With respect to 401(k) plan excess deferrals (as defined in Code §402(g)) made in taxable year 2007, the Plan administrator must calculate allocable income for the taxable year and also for the gap period (i.e., the period after the close of the taxable year in which the excess deferral occurred and prior to the distribution); provided that the Plan administrator will calculate and distribute the gap period allocable income only if the Plan administrator in accordance with the Plan terms otherwise would allocate the gap period allocable income to the Participant's account. With respect to 401(k) plan excess deferrals made in taxable years after 2007, gap period income may not be distributed.
- 11.3 **Plan termination distribution availability.** For purposes of determining whether the Employer maintains an alternative defined contribution plan (described in Treas. Reg. §1.401(k)-1(d)(4)(i)) that would prevent the Employer from distributing elective deferrals (and other amounts, such as QNECs, that are subject to the distribution restrictions that apply to elective deferrals) from a terminating 401(k) plan, an alternative defined contribution plan does not include an employee stock ownership plan defined in Code §§4975(e)(7) or 409(a), a simplified employee pension as defined in Code §408(k), a SIMPLE IRA plan as defined in Code §408(p), a plan or contract that satisfies the requirements of Code §403(b), or a plan that is described in Code §§457(b) or (f).

**ARTICLE XII
QUALIFIED OPTIONAL SURVIVOR ANNUITY**

- 12.1 **Right to Elect Qualified Optional Survivor Annuity.** Effective with respect to Plan Years beginning after December 31, 2007, a participant who elects to waive the qualified joint and survivor annuity form of benefit, if offered under the Plan, is entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity shall explain the terms and conditions of the "qualified optional survivor annuity."
- 12.2 Definition of Qualified Optional Survivor Annuity.
- a. **General.** For purposes of this Article, the term "qualified optional survivor annuity" means an annuity:
- (1) For the life of the participant with a survivor annuity for the life of the spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the spouse, and
 - (2) Which is the actuarial equivalent of a single annuity for the life of the participant.
- Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.
- b. **Applicable percentage.** For purposes of this Section, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse). If the survivor annuity percentage is less than 75 percent, then the "applicable percentage" is 75 percent; otherwise, the "applicable percentage" is 50 percent.

**ARTICLE XIII
DIRECT ROLLOVER TO ROTH IRA**

- 13.1 **Roth IRA rollover.** For distributions made after December 31, 2007, a participant may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code §408A(b).

**ARTICLE XIV
QUALIFIED DOMESTIC RELATIONS ORDERS**

- 14.1 **Permissible QDROs.** Effective April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.
- 14.2 **Other QDRO requirements apply.** A domestic relations order described in Section 14.1 is subject to the same requirements and protections that apply to QDROs.

ARTICLE XV
HEART ACT PROVISIONS

- 15.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code §414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.
- 15.2 **Benefit accrual.** If the Employer elects in Amendment Section 2.7 to apply this Section 15.2, then for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled on or after January 1, 2007 (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.
 - a. **Determination of benefits.** The Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 15.2 for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) if service with the Employer is less than such 12-month period, the actual length of continuous service with the Employer.
- 15.3 **Differential wage payments.** For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an employee of the employer making the payment, (ii) the differential wage payment is treated as compensation, and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.
- 15.4 **Severance from employment.** Notwithstanding Section 15.3(i), for purposes of Code §401(k)(2)(B)(i)(I), an individual is treated as having been severed from employment during any period the individual is performing service in the uniformed services described in Code §3401(h)(2)(A).
 - a. **Suspension of deferrals.** If an individual elects to receive a distribution by reason of severance from employment, death or disability, the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.
 - b. **Nondiscrimination requirement.** Section 15.3(iii) applies only if all employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code §3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)).

Except with respect to any election made by the employer in Article II, this amendment is hereby adopted by the prototype sponsor on behalf of all adopting employers.

Sponsor's signature and Adoption Date are on file with Sponsor.

Sponsor Name: Wells Fargo Bank, N.A.

NOTE: The Employer only needs to execute this Amendment if an election has been made in Article II.

This Amendment has been executed this 12th day of December, 2011.

Name of Plan: LKQ Corporation Employees' Retirement Plan

Name of Employer: LKQ Corporation

By: /s/ Walter Hanley
EMPLOYER

**AMENDMENT FOR
HEART AND WRERA
(Defined Contribution Plan)**

**ARTICLE I
PREAMBLE**

- 1.1 **Effective date of Amendment.** The Employer adopts this Amendment to the Plan to reflect recent law changes. This Amendment is effective as indicated below for the respective provisions.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer's election.** The Employer adopts all the default provisions of this Amendment except as otherwise elected in Article II.
- 1.4 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.5 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates these HEART and WRERA provisions).

**ARTICLE II
EMPLOYER ELECTIONS**

The Employer only needs to complete the questions in Sections 2.2 through 2.3 below in order to override the default provisions set forth below.

- 2.1 **Default Provisions.** Unless the Employer elects otherwise in this Article, the following defaults will apply:
- a. **Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided.**
 - b. **Differential wage payments are treated as Compensation for all Plan benefit purposes.**
 - c. **The Plan permits distributions pursuant to the HEART Act on account of "deemed" severance of employment.**
 - d. **Required Minimum Distributions (RMDs) for 2009 were suspended unless a Participant or Beneficiary elected to receive such distributions.**
- 2.2 **HEART ACT provisions** (Article III).
- Continued benefit accruals.** Amendment Section 3.2 will not apply unless elected below:
- a. The provisions of Amendment Section 3.2 apply effective as of: (select one)
 1. the first day of the 2007 Plan Year.
 2. (may not be earlier than the first day of the 2007 Plan Year).
 However, the provisions no longer apply effective as of: (select if applicable)
 3. .
- Differential pay** . Differential wage payments (as described in Amendment Section 3.3) will be treated, for Plan Years beginning after December 31, 2008, as compensation for all Plan benefit purposes unless b. is elected below:
- b. In lieu of the above default provision, the employer elects the following (select all that apply; these selections do not affect the operation of Amendment Section 3.3(ii)):
 1. the inclusion is effective for Plan Years beginning after (may not be earlier than December 31, 2008).
 2. the inclusion only applies to Compensation for purposes of Elective Deferrals.
- Distributions for deemed severance of employment.** The Plan permits distributions pursuant to Amendment Section 3.4 unless otherwise elected below:
- c. The Plan does not permit such distributions.
 - d. The Plan permits such distributions effective as of January 1, 2009 (may not be earlier than January 1, 2007).

2.3 **WRERA (RMD waivers for 2009).** The provisions of Amendment Section 4.1 apply (RMDs are suspended unless a Participant or Beneficiary elects otherwise) unless otherwise elected below:

- a. The provisions of Amendment Section 4.2 apply (RMDs continued unless otherwise elected by a Participant or Beneficiary).
- b. RMDs continued in accordance with the terms of the Plan without regard to this Amendment (i.e., no election available to Participants or Beneficiaries).
- c. Other:

For purposes of Amendment Section 4.3, the Plan will also treat the following as eligible rollover distributions in 2009: (If no election is made, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(H)):

- d. 2009 RMDs and Extended 2009 RMDs (both as defined in Article IV of this Amendment).
- e. 2009 RMDs (as defined in Article IV of this Amendment) but only if paid with an additional amount that is an eligible rollover distribution without regard to Code §401(a)(9)(H).

ARTICLE III HEART ACT PROVISIONS

- 3.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code §414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.
- 3.2 **Benefit accrual.** If the Employer elects in Amendment Section 2.2 to apply this Section 3.2, then effective as of the date specified in Amendment Section 2.2, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.
- a. **Determination of benefits.** The Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 3.2 for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) the actual length of continuous service with the Employer.
- 3.3 **Differential wage payments.** For years beginning after December 31, 2008: (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an employee of the employer making the payment; (ii) the differential wage payment is treated as compensation for purposes of Code §415(c)(3) and Treasury Reg. §1.415(c)-2 (e.g., for purposes of Code §415, top-heavy provisions of Code §416, determination of highly compensated employees under Code §414(q), and applying the 5% gateway requirement under the Code §401(a)(4) regulations); and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) (or corresponding plan provisions, including, but not limited to, Plan provisions related to the ADP or ACP test) by reason of any contribution or benefit which is based on the differential wage payment. The Plan Administrator operationally may determine, for purposes of the provisions described in Code §414(u)(1)(C), whether to take into account any deferrals, and if applicable, any matching contributions, attributable to differential wages. Differential wage payments (as described herein) will also be considered compensation for all Plan purposes unless otherwise elected at Amendment Section 2.2.
- Section 3.3(iii) above applies only if all employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code §3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)).
- 3.4 **Deemed Severance.** Notwithstanding Section 3.3(i), if a Participant performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code §412. However, the Plan will not distribute such a Participant's account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision (such as a qualified reservist distribution), then the other Plan provision will control and the 6-month suspension will not apply.

**ARTICLE IV
WAIVER OF 2009 REQUIRED DISTRIBUTIONS**

- 4.1 **Suspension of RMDs unless otherwise elected by Participant.** This paragraph does not apply if the Employer elected Amendment Section 2.3a, b, or c. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (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 designated 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 distributions described in the preceding sentence.
- 4.2 **Continuation of RMDs unless otherwise elected by Participant.** This paragraph applies if Amendment Section 2.3a is selected. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (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 designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.
- 4.3 **Direct Rollovers.** Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2009, as elected by the Employer in Amendment Section 2.3, will be treated as eligible rollover distributions. If no election is made by the Employer in Amendment Section 2.3, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(H).

**ARTICLE V
DIVESTMENT OF EMPLOYER SECURITIES**

- 5.1 **Application and Effective Date of Article.**
- a. **Application.** This Article V only applies to a Plan that is an "applicable defined contribution plan." Except as provided herein or in Treas. Reg. §1.401(a)(35)-1, an "applicable defined contribution plan" means a defined contribution plan that holds employer securities (within the meaning of Treas. Reg. §1.401(a)(35)-1(f)(3)) that are publicly traded (within the meaning of Treas. Reg. §1.401(a)(35)-1(f)(5)). An "applicable defined contribution" does not include a one-participant plan, as defined in Code §401(a)(35)(E)(iv) or an employee stock ownership plan ("ESOP") as defined in Code §4975(e)(7) if: (i) the ESOP holds no contributions (or related earnings) that are (or were ever) subject to Code §§ 401(k) or 401(m); and (ii) the ESOP is a separate plan, for purposes of Code §414(l), from any other defined benefit plan or defined contribution plan maintained by the same employer or employers. Except as provided in Treas. Reg. §1.401(a)(35)-1(f)(2)(iv) or in Code §401(a)(35)(F)(ii) (relating to certain controlled groups), the Plan is treated as holding publicly traded Employer securities if any Employer corporation, or any member of a controlled group of corporations which includes such Employer corporation (as defined in Code §401(a)(35)(F)(iii)) has issued a class of stock which is a publicly traded Employer security.
- b. **Effective date.** The provisions of Code §401(a)(35) generally apply to Plan Years beginning after December 31, 2006. However, the effective date of the provisions relating to Treas. Reg. §1.401(a)(35)-1 are applicable to Plan Years beginning on or after January 1, 2011.
- 5.2 **Rule applicable to elective deferrals and employee contributions.** If any portion of an "applicable individual's" account attributable to elective deferrals or employee contributions is invested in publicly-traded Employer securities, then, except as otherwise provided herein, the "applicable individual" may elect to direct the Plan to divest any such securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Section 5.4. For purposes of this Section 5.2, an "applicable individual" means: (i) a Participant; (ii) an alternate payee who has an account under the Plan; or (iii) a Beneficiary of a deceased Participant.

- 5.3 **Rule applicable to Employer contributions.** If any portion of an “applicable individual’s” account attributable to nonelective or matching contributions is invested in publicly-traded Employer securities, then, except as otherwise provided herein, the “applicable individual” may elect to direct the Plan to divest any such securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Section 5.4.
- a. **Definition of “Applicable individual.”** For purposes of this Section 5.3, an “applicable individual” means: (i) a Participant who has completed at least three (3) years of service; (ii) an alternate payee who has an account under the Plan with respect to a Participant who has completed at least three (3) years of service; or (iii) a Beneficiary of a deceased Participant. For this purpose, a Participant completes three (3) years of service on the last day of the vesting computation period provided for under the Plan that constitutes the completion of the third year of service under Code §411(a)(5). However, if the Plan uses the elapsed time method of crediting service for vesting purposes (or the Plan provides for immediate vesting without using a vesting computation period or the elapsed time method of determining vesting), a Participant completes three (3) years of service on the day immediately preceding the third anniversary of the Participant’s date of hire.
- b. **Three-year phase-in applicable to Employer contributions.** For Employer securities acquired with nonelective or matching contributions during a Plan Year beginning before January 1, 2007, the rule described in this Section 5.3 only applies to the percentage of the Employer securities (applied separately for each class of securities) as follows:
- | Plan Year | Percentage |
|-----------|------------|
| 2007 | 33 |
| 2008 | 66 |
| 2009 | 100 |
- c. **Exception to phase-in for certain age 55 Participants.** The 3-year phase-in rule of Section 5.3.b does not apply to a Participant who has attained age 55 and who has completed at least three (3) years of service (as defined in Section 5.3.a above) before the first Plan Year beginning after December 31, 2005.
- 5.4 **Investment options.** For purposes of this Article V, other investment options must include not less than three (3) investment options, other than Employer securities, to which the individual who has the right to divest under Amendment Section 5.2 or 5.3 may direct the proceeds from the divestment of Employer securities. Each of the three (3) investment options must be diversified and have materially different risk and return characteristics. For this purpose, investment options that constitute a broad range of investment alternatives within the meaning of Department of Labor Regulation §2550.404c-1(b)(3) are treated as being diversified and having materially different risk and return characteristics.
- 5.5 **Restrictions or conditions on investments in Employer securities.** The Plan must provide reasonable divestment and reinvestment opportunities at least quarterly. Furthermore, except as permitted by Treas. Reg. §1.401(a)(35)-1 (e), the Plan may not impose restrictions or conditions on the investment of Employer securities which the Plan does not impose on the investment of other Plan assets.

This Amendment has been executed this 12th day of December, 2011.

Name of Plan: LKQ Corporation Employees’ Retirement Plan

Name of Employer: LKQ Corporation

By: /s/ Walter Hanley

EMPLOYER

**WELLS FARGO
DEFINED CONTRIBUTION PROTOTYPE PLAN AND TRUST AGREEMENT**

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**WELLS FARGO
DEFINED CONTRIBUTION PROTOTYPE PLAN AND TRUST AGREEMENT
BASIC PLAN DOCUMENT #01**

Wells Fargo Bank, N.A., in its capacity as Prototype Plan Sponsor or as Volume Submitter Practitioner, establishes this Prototype Plan or this Volume Submitter Plan intended to conform to and qualify under §401 and §501 of the Internal Revenue Code of 1986, as amended. An Employer establishes a Plan and Trust under this Prototype Plan or this Volume Submitter Plan by executing an Adoption Agreement.

**ARTICLE I
DEFINITIONS**

1.01 Account. Account means the separate Account(s) which the Plan Administrator or the Trustee maintains under the Plan for a Participant.

1.02 Account Balance or Accrued Benefit. Account Balance or Accrued Benefit means the amount of a Participant's Account(s) as of any relevant date derived from Plan contributions and from Earnings.

1.03 Accounting Date. Accounting Date means the last day of the Plan Year. The Plan Administrator will allocate Employer Contributions and forfeitures for a particular Plan Year as of the Accounting Date of that Plan Year, and on such other dates, if any, as the Plan Administrator determines, consistent with the Plan's allocation conditions and other provisions.

1.04 Adoption Agreement. Adoption Agreement means the document executed by each Employer adopting this Plan. References to Adoption Agreement within this basic plan document are to the Adoption Agreement as completed and executed by a particular Employer unless the context clearly indicates otherwise. An adopting Employer's Adoption Agreement and this basic plan document together constitute a single Plan and Trust of the Employer. Each elective provision of the Adoption Agreement corresponds (by its parenthetical section reference) to the section of the Plan which grants the election. All "Section" references within an Adoption Agreement are to the basic plan document. All "Election" references within an Adoption Agreement are Adoption Agreement references. The Employer or Plan Administrator to facilitate Plan administration or to generate written policies or forms for use with the Plan may maintain one or more administrative checklists as an attachment to the Adoption Agreement or otherwise. Any such checklists are not part of the Plan.

(A) Prototype/Standardized Plan or Nonstandardized Plan. Each Adoption Agreement offered under this Prototype Plan is either a Nonstandardized Plan or a Standardized Plan, as identified in that Adoption Agreement, under Rev. Proc 2005-16 §§4.10 and 4.11. The provisions of this Plan apply in the same manner to Nonstandardized Plans and to Standardized Plans unless otherwise specified. If the Employer maintains its Plan pursuant to a Nonstandardized Adoption Agreement or a Standardized Adoption Agreement, the Plan is a Prototype Plan and all provisions in this basic plan which expressly or by their context refer to a "Volume Submitter Plan" are not applicable.

(B) Volume Submitter Adoption Agreement. A Volume Submitter Adoption Agreement for purposes of this Volume Submitter Plan is subject to the same provisions as apply to a Nonstandardized Plan, except as the Plan or Volume Submitter Adoption Agreement otherwise indicates. If the Employer maintains its Plan pursuant to a Volume Submitter Adoption Agreement, the Plan is a Volume Submitter Plan and all provisions in this basic plan which expressly or by their context refer to a "Prototype Plan" are not applicable.

(C) Participation Agreement. Participation Agreement, in the case of a Prototype Plan means the Adoption Agreement page or pages executed by one or more Related Employers to become a Participating Employer. In the case of a Volume Submitter Plan, Participation Agreement means the Adoption Agreement page or pages executed by one or more Related Employers or, in the case of a Multiple Employer Plan, by one or more Employers which are not Related Employers (see Section 12.02(C)) to become a Participating Employer.

1.05 Advisory Letter. Advisory Letter means an IRS issued letter as to the acceptability in form of a Volume Submitter Plan as defined in Section 13.03 of Rev. Proc. 2005-16.

1.06 Annuity Contract. Annuity Contract means an annuity contract that the Trustee purchases with the Participant's Vested Account Balance. An Annuity Contract includes a QJSA, a QPSA and an Alternative Annuity. If the Plan Administrator elects or is required to provide an Annuity Contract, such annuity must be a Nontransferable Annuity and otherwise must comply with the Plan terms.

(A) Annuity Starting Date. A Participant's Annuity Starting Date means the first day of the first period for which the Plan pays an amount as an annuity or in any other form.

(B) Alternative Annuity. See Section 6.03(A)(5).

(C) Nontransferable Annuity. Nontransferable Annuity means an Annuity Contract which by its terms provides that it may not be sold, assigned, discounted, pledged as collateral for a loan or security for the performance of an obligation or for any purpose to any person other than the insurance company. If the Plan distributes an Annuity Contract, the Annuity Contract must be a Nontransferable Annuity.

(D) QJSA. See Sections 6.04(A)(1) and (2).

(E) QPSA. See Section 6.04(B)(1).

1.07 **Appendix.** Appendix means one of the Appendices to an Adoption Agreement designated as "A", "B", "C", or "D" which are expressly authorized by the Plan and as part of the Plan, are covered by the Advisory Letter or Opinion Letter.

1.08 **Applicable Law.** Applicable Law means the Code, ERISA, USERRA, Treasury, IRS and DOL regulations, rulings, notices, and other written guidance, case law and any other applicable federal, state or local law affecting the Plan and which is binding upon the Plan or upon which the Employer, the Plan Administrator, the Trustee and other Plan fiduciaries may rely in the operation, administration and management of the Plan and Trust. If Applicable Law supersedes or modifies any authority the Plan specifically references, the reference includes such Applicable Law.

1.09 **Beneficiary.** Beneficiary means a person designated by a Participant, a Beneficiary or by the Plan who is or may become entitled to a benefit under the Plan. A Beneficiary who becomes entitled to a benefit under the Plan remains a Beneficiary under the Plan until the Trustee has fully distributed to the Beneficiary his/her Plan benefit. A Beneficiary's right to (and the Plan Administrator's or a Trustee's duty to provide to the Beneficiary) information or data concerning the Plan does not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

1.10 **Code.** Code means the Internal Revenue Code of 1986, as amended and includes applicable Treasury regulations.

1.11 Compensation.

(A) **Uses and Context.** Any reference in the Plan to Compensation is a reference to the definition in this Section 1.11, unless the Plan reference, or the Employer in its Adoption Agreement, modifies this definition. Except as the Plan otherwise specifically provides, the Plan Administrator will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. A Compensation payment includes Compensation paid by the Employer through another person under the common paymaster provisions in Code §§3121 and 3306. In the case of a Self-Employed Individual, Compensation means Earned Income as defined in Section 1.11(J). However, if the Plan must use an equivalent alternative compensation amount (pursuant to Treas. Reg. §1.414(s)-1(g)(1)(i) or other Applicable Law) in performing nondiscrimination testing relating to Matching Contributions, Nonelective Contributions and other Employer Contributions (excluding Elective Deferrals), the Compensation of such Self-Employed Individual will be limited to such equivalent alternative compensation amount.

(B) **Base Definitions and Modifications.** The Employer in its Adoption Agreement must elect one of the following base definitions of Compensation: W-2 Wages, Code §3401(a) Wages, or 415 Compensation. The Employer may elect a different base definition as to different Contribution

Types. The Employer in its Adoption Agreement may specify any modifications thereto, for purposes of contribution allocations under Article III. If the Employer fails to elect one of the above-referenced definitions, the Employer is deemed to have elected the W-2 Wages definition.

(1) **W-2 Wages.** W-2 Wages means wages for federal income tax withholding purposes, as defined under Code §3401(a), plus all other payments to an Employee in the course of the Employer's trade or business, for which the Employer must furnish the Employee a written statement under Code §§6041, 6051, and 6052, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or services performed (such as the exception for agricultural labor in Code §3401(a)(2)). The Employer in Appendix B may elect to exclude from W-2 Compensation certain Employer paid or reimbursed moving expenses as described therein.

(2) **Code §3401(a) Wages (income tax wage withholding).** Code §3401(a) Wages means wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or the location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(3) **Code §415 Compensation (current income definition/simplified compensation under Treas. Reg. §1.415-2(d)(10) and Prop. Treas. Reg. §1.415(c)-2(d)(2)).** Code §415 Compensation means the Employee's wages, salaries, fees for professional service and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. §1.62-2(c)).

Code §415 Compensation does not include:

(a) **Deferred compensation/SEP/SIMPLE.** Employer contributions (other than Elective Deferrals) to a plan of deferred compensation (including a simplified employee pension plan under Code §408(k) or to a simple retirement account under Code §408(p)) to the extent the contributions are not included in the gross income of the Employee for the Taxable Year in which contributed, and any distributions from a plan of deferred compensation (whether or not qualified), regardless of whether such amounts are includible in the gross income of the Employee when distributed.

(b) **Option exercise.** Amounts realized from the exercise of a non-qualified stock option (an option other than a statutory option under Treas. Reg. §1.421-1(b)), or when restricted stock or other property held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture under Code §83.

(c) **Sale of option stock.** Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option as defined under Treas. Reg. §1.421-1(b).

(d) **Other amounts that receive special tax benefits.** Other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts under Code §125).

(e) **Other similar items.** Other items of remuneration which are similar to any of the items in Sections 1.11(B)(3)(a) through (d).

(4) **Alternative (general) 415 Compensation.** The Employer in Appendix B may elect to apply the 415 definition of Compensation in Treas. Reg. §1.415-2(d)(1) and Prop. Treas. Reg. §1.415(c)-2(a). Under this definition, Compensation means as defined in Section 1.11(B)(3) but with the addition of: (a) amounts described in Code §§104(a)(3), 105(a), or 105(b) but only to the extent that these amounts are includible in Employee's gross income; (b) amounts paid or reimbursed by the Employer for moving expenses incurred by the Employee, but only to the extent that at the time of payment it is reasonable to believe these amounts are not deductible by the Employee under Code §217; (c) the value of a nonstatutory option (an option other than a statutory option under Treas. Reg. §1.421-1(b)) granted by the Employer to the an Employee, but only to the extent that the value of the option is includible in the Employee's gross income for the Taxable Year of the grant; and (d) the amount includible in the Employee's gross income upon the Employee's making of an election under Code §83(b). The Employer in Appendix B also must elect whether to include as Compensation amounts received from a nonqualified unfunded deferred compensation plan in the Taxable Year received but only to extent includible in gross income.

(C) **Deemed 125 Compensation.** Deemed 125 Compensation means, in the case of any definition of Compensation which includes a reference to Code §125, amounts under a Code §125 plan of the Employer that are not available to a Participant in cash in lieu of group health coverage, because the Participant is unable to certify that he/she has other health coverage. Compensation under this Section 1.11 does not include Deemed 125 Compensation, unless the Employer in Appendix B elects to include Deemed 125 Compensation under this Section 1.11.

(D) **Elective Deferrals.** Compensation under Section 1.11 includes Elective Deferrals unless the Employer in its Adoption Agreement elects to exclude Elective Deferrals.

(E) **Compensation Dollar Limitation.** For any Plan Year, the Plan Administrator in allocating contributions under Article III or in testing the Plan for nondiscrimination, cannot take into account more than \$200,000 (or such larger or smaller amount as the Commissioner of Internal Revenue may prescribe pursuant to an adjustment made in

the same manner as under Code §415(d)) of any Participant's Compensation. Notwithstanding the foregoing, an Employee under a 401(k) Plan may make Elective Deferrals with respect to Compensation which exceeds the Plan Year Compensation limitation, provided such Elective Deferrals otherwise satisfy the Elective Deferral Limit and other applicable Plan limitations. In applying any Plan limitation on the amount of Matching Contributions or any Plan limit on Elective Deferrals which are subject to Matching Contributions, where such limits are expressed as a percentage of Compensation, the Plan Administrator may apply the Compensation limit under this Section 1.11(E) annually, even if the Matching Contribution formula is applied on a per pay period basis or is applied over any other time interval which is less than the full Plan Year or the Plan Administrator may prorate the Compensation limit.

(F) **Nondiscrimination.** For purposes of determining whether the Plan discriminates in favor of HCEs, Compensation means as the Plan Administrator operationally determines provided that any such nondiscrimination testing definition which the Plan Administrator applies must satisfy Code §414(s) and the regulations thereunder. For this purpose the Plan Administrator may, but is not required, to apply for nondiscrimination testing purposes the Plan's allocation definition of Compensation under this Section 1.11 or Annual Additions Limit definition of Compensation under Section 4.05(C). The Employer's election in its Adoption Agreement relating to Pre-Entry Compensation (to limit Compensation to Participating Compensation or to include Plan Year Compensation) is nondiscriminatory.

(G) **Excluded Compensation.** Excluded Compensation means such Compensation as the Employer in its Adoption Agreement elects to exclude for purposes of this Section 1.11.

(H) **Pre-Entry Compensation.** The Employer in its Adoption Agreement for allocation purposes must elect Participating Compensation or Plan Year Compensation as to some or all Contribution Types.

(1) **Participating Compensation.** Participating Compensation for purposes of this Section 1.11 means Compensation only for the period during the Plan Year in which the Participant is a Participant in the overall Plan, or under the plan resulting from disaggregation under the OEE or EP rules under Section 4.06(C)(1), or as to a Contribution Type as applicable. If the Employer in its Adoption Agreement elects Participating Compensation, the Employer will elect whether to apply the election to all Contribution Types or only to particular Contribution Type(s).

(2) **Plan Year Compensation.** Plan Year Compensation for purposes of this Section 1.11 means Compensation for a Plan Year, including Compensation for any period prior to the Participant's Entry Date in the overall Plan or as to a Contribution Type as applicable. If the Employer in its Adoption Agreement elects Plan Year Compensation, the Employer will elect whether to apply the election to all Contribution Types or only to particular Contribution Type(s).

(I) Post-Severance Compensation. The Plan excludes Post-Severance Compensation unless the Employer in Appendix B elects to include Post-Severance Compensation as described in this Section 1.11(I). If the Employer elects to include Post-Severance Compensation, the Employer in Appendix B will specify the Effective Date thereof which for purposes of 415 testing (or other testing requiring use of 415 Compensation) cannot be earlier than January 1, 2005.

(1) Post-Severance Compensation under Proposed 415 Regulations.

(a) Payment timing. Post-Severance Compensation includes certain payments described below made after Severance from Employment, and within 2 1/2 months following Severance from Employment (whether paid in the same Plan or Limitation Year or paid in the Plan or Limitation Year following the Severance from Employment). The Employer in Appendix B also may elect (for allocation purposes only) to include amounts which would be Post-Severance Compensation but for being paid after the time limit described herein (except as to Elective Deferrals) or may elect to limit Post-Severance Compensation to any lesser period of time.

(b) Limitation as to type. Post-Severance Compensation means: (i) Payments that, absent a Severance from Employment, would have been paid to the Employee while the Employee continued in employment with the Employer and which consist of regular compensation for services during the Employee's regular working hours or for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses and other similar compensation; and (ii) payments for bona fide sick, vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued. The Employer in Appendix B may elect (for allocation purposes only) to exclude certain of the above amounts which would be Post-Severance Compensation.

(c) Exclusions. Post-Severance Compensation under Section 1.11(I)(1) does not include any payment not described in Section 1.11(I)(1)(b) even if paid within the time period described in Section 1.11(I)(1)(a), including severance pay, unfunded non-qualified deferred compensation or parachute payments under Code §280G(b)(2).

(2) Qualified Military Service. Post-Severance Compensation includes (without regard to the timing requirement of Section 1.11(I)(1)(a), including for Elective Deferrals) amounts paid to individuals not currently performing Service for the Employer by reason of Qualified Military Service, to the extent that those payments do not exceed what the Employer would have paid to the Employee had the Employee not entered Qualified Military Service. The Employer in Appendix B may elect (for allocation purposes only) to exclude the above amounts from Post-Severance Compensation.

(J) Earned Income. Earned Income means net earnings from self-employment in the trade or business with respect

to which the Employer has established the Plan, provided personal services of the Self-Employed Individual are a material income-producing factor. Earned Income also includes gains and earnings (other than capital gain) from the sale or licensing of property (other than goodwill) by the individual who created that property, even if those gains would not ordinarily be considered net earnings from self-employment. The Plan Administrator will determine net earnings without regard to items excluded from gross income and the deductions allocable to those items. The Plan Administrator will determine net earnings after the deduction allowed to the Self-Employed Individual for all contributions made by the Employer to a qualified plan and after the deduction allowed to the Self-Employed Individual under Code §164(f) for self-employment taxes.

(K) Deemed Disability Compensation. The Plan does not include Deemed Disability Compensation under Code §415(c)(3)(C) unless the Employer in Appendix B elects to include Deemed Disability Compensation under this Section 1.11(K). Deemed Disability Compensation is the Compensation the Participant would have received for the year if the Participant were paid at the same rate as applied immediately prior to Disability if such deemed compensation is greater than actual Compensation as determined without regard to this Section 1.11(K). This Section 1.11(K) applies only if the affected Participant is an NHCE immediately prior to becoming disabled (or the Appendix B election provides for the continuation of contributions on behalf of all such disabled participants for a fixed or determinable period) and all contributions made with respect to Compensation under this Section 1.11(K) are immediately Vested.

1.12 Contribution Types. Contribution Types means the contribution types required or permitted under the Plan as the Employer elects in its Adoption Agreement.

1.13 Defined Contribution Plan. Defined Contribution Plan means a retirement plan which provides for an individual account for each Participant and for benefits based solely on the amount contributed to the Participant's Account, and on any Earnings, expenses, and forfeitures which the Plan Administrator may allocate to such Participant's Account.

1.14 Defined Benefit Plan. Defined Benefit Plan means a retirement plan which does not provide for individual accounts for Employer contributions and which provides for payment of determinable benefits in accordance with the plan's formula.

1.15 Disability. Disability means, as the Employer elects in its Adoption Agreement, the basic plan definition or an alternative definition. A Participant who incurs a Disability is "disabled."

(A) Basic Plan Definition. Disability means 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 permanence and degree of such impairment must be supported by medical evidence.

(B) Alternative Definition. The Employer in its Adoption Agreement may specify any alternative definition of Disability which is not inconsistent with Applicable Law.

(C) Administration. For purposes of this Plan, a Participant is disabled on the date the Plan Administrator determines the Participant satisfies the definition of Disability. The Plan Administrator may require a Participant to submit to a physical examination in order to confirm the Participant's Disability. The Plan Administrator will apply the provisions of this Section 1.15 in a nondiscriminatory, consistent, and uniform manner.

1.16 Designated IRA Contribution. Designated IRA Contribution means a Participant's IRA contribution to the Plan made in accordance with the Adoption Agreement.

1.17 DOL. DOL means the U.S. Department of Labor.

1.18 Earnings. Earnings means the net income, gain or loss earned by a particular Account, by the Trust, or with respect to a contribution or to a distribution, as the context requires.

1.19 Effective Date. The Effective Date of this Plan is the date the Employer elects in its Adoption Agreement, but not earlier than January 1, 2002. However, as to a particular provision or action taken by any party pursuant to the Plan (such as a Plan amendment or termination, or the giving of any notice), a different Effective Date may apply such as the basic plan document may provide, as the Employer may elect in its Adoption Agreement, in a Participation Agreement or in an Appendix, or as indicated in any other document which evidences the action taken.

1.20 Elective Deferrals. Elective Deferrals means a Participant's Pre-Tax Deferrals, Roth Deferrals, Automatic Deferrals and, as the context requires, Catch-Up Deferrals under the Plan, and which the Employer contributes to the Plan at the Participant's election (or automatically) in lieu of cash compensation. As to other plans, elective deferrals means amounts excludible from the Employee's gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), 408(p) or 457(b), and includes amounts included in the Employee's gross income under Code §402A, and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) plan, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code §457(b) plan.

(A) Pre-Tax Deferral. Pre-Tax Deferral means an Elective Deferral (including a Catch-Up Deferral or an Automatic Deferral) which is not subject to income tax when made.

(B) Roth Deferral. Roth Deferral means an Elective Deferral (including a Catch-Up Deferral or an Automatic Deferral) which a Participant irrevocably designates as a Roth Deferral under Code §402A at the time of deferral and which is subject to income tax when made to the Plan. In the case of an Automatic Deferral, see Section 3.02(B)(7).

(C) Automatic Deferral. See Section 3.02(B)(1).

(D) Catch-Up Deferral. See Section 3.02(D)(2).

1.21 Employee. Employee means any common law employee, Self-Employed Individual, Leased Employee or other person the Code treats as an employee of the Employer for purposes of the Employer's qualified plan. An Employee is either an Eligible Employee or an Excluded Employee. An Employee is either an HCE or an NHCE.

(A) Self-Employed Individual. Self-Employed Individual means an individual who has Earned Income (or who would have had Earned Income but for the fact that the trade or business did not have net profits) for the Taxable Year from the trade or business for which the Plan is established.

(B) Leased Employee. Leased Employee means an individual (who otherwise is not an Employee of the Employer) who, pursuant to an agreement between the Employer and any other person (the "leasing organization"), has performed services for the Employer (or for the Employer and any persons related to the Employer within the meaning of Code §144(a)(3)) on a substantially full-time basis for at least one year and who performs such services under primary direction or control of the Employer within the meaning of Code §414(n)(2). Except as described in Section 1.21(B)(1), a Leased Employee is an Employee for purposes of the Plan. However, under a Nonstandardized Plan or under a Volume Submitter Plan, a Leased Employee is an Excluded Employee unless the Employer in Appendix B elects not to treat Leased Employees as Excluded Employees as to any or all Contribution Types. "Compensation" in the case of an out-sourced worker who is an Employee or a Leased Employee includes Compensation from the leasing organization which is attributable to services performed for the Employer.

(1) Safe Harbor Plan Exception. A Leased Employee is not an Employee for Plan purposes if the leasing organization covers the employee in a safe harbor plan and, prior to application of this safe harbor plan exception, 20% or fewer of the NHCEs, excluding those NHCEs who do not satisfy the "substantially full-time" standard of Code §414(n)(2)(B), are Leased Employees. A safe harbor plan is a Money Purchase Pension Plan providing immediate participation, full and immediate vesting, and a nonintegrated contribution formula equal to at least 10% of the employee's compensation, without regard to employment by the leasing organization on a specified date. The safe harbor plan must determine the 10% contribution on the basis of compensation as defined in Code §415(c)(3) including Elective Deferrals.

(2) Other Requirements. The Plan Administrator must apply this Section 1.21 in a manner consistent with Code §§414(n) and 414(o) and the regulations issued under those Code sections. The Plan Administrator for 415 testing under Article IV, for satisfaction of the Top-Heavy Minimum Allocation under Article X and otherwise as required under Applicable Law will treat contributions or benefits provided to a Leased Employee under a plan of the leasing organization, and which are attributable to services performed by the Leased Employee for the Employer, as provided by the Employer. However, the Employer will not

offset (reduce) contributions to this Plan by such contributions or benefits provided to the Leased Employee under the leasing organization's plan unless the Employer in Appendix B elects to do so.

(C) Eligible Employee. Eligible Employee means an Employee other than an Excluded Employee.

(D) Excluded Employee. Excluded Employee means, as the Plan provides or as the Employer elects in its Adoption Agreement, any Employee, or class or group of Employees, not eligible to participate in the Plan, or as to any Contribution Type, as the context requires.

(1) Collective Bargaining Employees. If the Employer elects in its Adoption Agreement to exclude Collective Bargaining Employees from eligibility to participate, the exclusion applies to any Employee included in a unit of Employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers if: (a) retirement benefits were the subject of good faith bargaining; and (b) two percent or fewer of the employees covered by the agreement are "professional employees" as defined in Treas. Reg. §1.410(b)-9, unless the collective bargaining agreement requires the Employee to be included within the Plan. The term "employee representatives" does not include any organization more than half the members of which are owners, officers, or executives of the Employer.

(2) Nonresident Aliens. If the Employer elects in its Adoption Agreement to exclude Nonresident Aliens from eligibility to participate, the exclusion applies to any Nonresident Alien Employee who does not receive any earned income, as defined in Code §911(d)(2), from the Employer which constitutes United States source income, as defined in Code §861(a)(3).

(3) Reclassified Employees. A Reclassified Employee under a Nonstandardized Plan or a Volume Submitter Plan is an Excluded Employee unless the Employer in Appendix B elects: (a) to include all Reclassified Employees as Eligible Employees; (b) to include one or more categories of Reclassified Employees as Eligible Employees; or (c) to include Reclassified Employees (or one or more groups of Reclassified Employees) as Eligible Employees as to one or more Contribution Types. A Reclassified Employee is any person the Employer does not treat as a common law employee or as a self-employed individual (including, but not limited to, independent contractors, persons the Employer pays outside of its payroll system and out-sourced workers) for federal income tax withholding purposes under Code §3401(a), irrespective of whether there is a binding determination that the individual is an Employee or a Leased Employee of the Employer. Self-Employed Individuals are not Reclassified Employees.

(4) Part-Time/Temporary/Seasonal Employees. The Employer in its Adoption Agreement may elect to exclude any Employees who it defines in the Adoption Agreement as "part-time," "temporary" or "seasonal" based on their regularly scheduled Service being less than a specified number of Hours of Service during a relevant

Eligibility Computation Period. Notwithstanding any such exclusion, if the Part-Time, Temporary or Seasonal Excluded Employee actually completes at least 1,000 Hours of Service in the relevant Eligibility Computation Period, the affected Excluded Employee is no longer an Excluded Employee and will enter the Plan on the next Entry Date following completion of the Eligibility Computation Period in which he/she completed 1,000 Hours of Service, provided the Employee is employed by the Employer on that Entry Date.

(E) HCE. HCE means a highly compensated Employee, defined under Code §414(q) as an Employee who satisfies one of Sections 1.21(E)(1) or (2) below.

(1) More than 5% owner. During the Plan Year or during the preceding Plan Year, the Employee is a more than 5% owner of the Employer (applying the constructive ownership rules of Code §318 as modified by Code §416(i)(1)(B)(iii)(I), and applying the principles of Code §318 as modified by Code §416(i)(1)(B)(iii)(I), for an unincorporated entity).

(2) Compensation Threshold. During the preceding Plan Year (or in the case of a short Plan Year, the immediately preceding 12 month period) the Employee had Compensation in excess of \$80,000 (as adjusted for the relevant year by the Commissioner of Internal Revenue at the same time and in the same manner as under Code §415(d), except that the base period is the calendar quarter ending September 30, 1996) and, if the Employer under its Adoption Agreement makes the top-paid group election, was part of the top-paid 20% group of Employees (based on Compensation for the preceding Plan Year).

(3) Compensation Definition. For purposes of this Section 1.21(E), "Compensation" means Compensation as defined in Section 4.05(C).

(4) Top-paid Group and Calendar Year Data. The Plan Administrator must make the determination of who is an HCE, including the determinations of the number and identity of the top-paid 20% group, consistent with Code §414(q) and regulations issued under that Code section. The Employer in its Adoption Agreement may make a calendar year data election to determine the HCEs for the Plan Year, as prescribed by Treasury regulations or by other guidance published in the Internal Revenue Bulletin. A calendar year data election must apply to all plans of the Employer which reference the HCE definition in Code §414(q). For purposes of this Section 1.21(E), if the current Plan Year is the first year of the Plan, then the term "preceding Plan Year" means the 12-consecutive month period immediately preceding the current Plan Year.

(5) Highly compensated former employee. The determination of highly compensated former employee status and the rules applicable thereto are determined in accordance with Temporary Reg. §1.414(q)-1T, A-4 and Notice 97-45.

(F) NHCE. NHCE means a nonhighly compensated employee, which is any Employee who is not an HCE.

1.22 **Employee Contribution and DECs.** Employee Contribution means a Participant's after-tax contribution to the Trust and which the Participant designates as an Employee Contribution at the time of contribution. An Elective Deferral (Pre-Tax or Roth) is not an Employee Contribution. A deductible employee contribution (DEC) means certain pre-1987 contributions described in Section 3.13.

1.23 **Employer.** Employer means each Signatory Employer, Lead Employer, Related Employer, and Participating Employer as the Plan indicates or as the context requires.

(A) **Signatory Employer.** The Signatory Employer is the Employer who establishes a Plan under this Prototype Plan or under this Volume Submitter Plan by executing an Adoption Agreement. The Employer for purposes of acting as Plan Administrator, making Plan amendments, restating the Plan, terminating the Plan or performing other ERISA settlor functions, means the Signatory Employer and does not include any Related Employer or Participating Employer. The Signatory Employer also may terminate the participation in the Plan of any Participating Employer upon written notice. The Signatory Employer will provide such notice not less than 30 days prior to the date of termination unless the Signatory Employer determines that the interest of Plan Participants requires earlier termination. See Article XII if the Plan is a Volume Submitter Plan and is a Multiple Employer Plan.

(B) **Lead Employer.** Lead Employer means the Signatory Employer under a Volume Submitter Plan which is a Multiple Employer Plan. See Section 12.02(B).

(C) **Related Group/Related Employer.** A Related Group is a controlled group of corporations (as defined in Code §414(b)), trades or businesses (whether or not incorporated) which are under common control (as defined in Code §414(c)), an affiliated service group (as defined in Code §414(m)) or an arrangement otherwise described in Code §414(o). Each Employer/member of the Related Group is a Related Employer. The term "Employer" includes every Related Employer for purposes of crediting Service and Hours of Service, determining Years of Service and Breaks in Service under Articles II and V, determining Separation from Service, applying the coverage test under Code Section 410(b), applying the Annual Additions Limit and nondiscrimination testing in Article IV, applying the top-heavy rules and the minimum allocation requirements of Article X, applying the definitions of Employee, HCE, Compensation (except as the Employer may elect in its Adoption Agreement relating to allocations) and Leased Employee, applying the safe harbor 401(k) provisions of Article III, applying the SIMPLE 401(k) provisions of Article III and for any other purpose the Code or the Plan require.

(D) **Participating Employer.** Participating Employer means a Related Employer (to the Signatory Employer or another Related Employer) which signs the Execution Page of the Adoption Agreement or a Participation Agreement to the Adoption Agreement. Only a Participating Employer (or Employees thereof) may contribute to the Plan. A Participating Employer is an Employer for all purposes of the Plan except as provided in Sections 1.23(A) or (B).

(1) **Standardized/Nonstandardized Plan.** If the Employer's Plan is a Standardized Plan, all Employees of the Employer or of any Related Employer, are Eligible Employees, irrespective of whether the Related Employer directly employing the Employee is a Participating Employer. Notwithstanding the immediately preceding sentence, individuals who become Employees of a Related Employer as a result of a transaction described in Code §410(b)(6)(C) are Excluded Employees during the Plan Year in which such transaction occurs nor in the following Plan Year, unless: (a) the Related Employer which employs such Employees becomes during such period a Participating Employer by executing a Participation Agreement to the Adoption Agreement; or (b) as described under Applicable Law, the Plan benefits or coverage change significantly during the transition period resulting in the termination of the transition period. If the Plan is a Nonstandardized Plan, the Employees of a Related Employer are Excluded Employees unless the Related Employer is a Participating Employer.

(2) **Volume Submitter/Multiple Employer Plan.** If Article XII applies, a Participating Employer includes an unrelated Employer who executes a Participation Agreement. See Section 12.02(C).

1.24 **Employer Contribution.** Employer Contribution means a Nonelective Contribution, a Matching Contribution, an Elective Deferral, a Prevailing Wage Contribution, a Money Purchase Pension Contribution or a Target Benefit Contribution, as the context may require.

1.25 **Entry Date.** Entry Date means the date(s) the Employer elects in its Adoption Agreement upon which an Eligible Employee who has satisfied the Plan's eligibility conditions and who remains employed by the Employer on the Entry Date, commences participation in the Plan or in a part of the Plan.

1.26 **EPCRS.** EPCRS means the IRS's Employee Plans Compliance Resolution System for resolving plan defects, or any successor program.

1.27 **ERISA.** ERISA means the Employee Retirement Income Security Act of 1974, as amended, and includes applicable DOL regulations.

1.28 **Final 401(k) Regulations Effective Date.** Final 401(k) Regulations Effective Date means the Plan Year beginning in 2006 (or such earlier Plan Year ending after December 29, 2004 as the Plan Administrator operationally applied and as the Employer elects in Appendix B). A reference to the Final 401(k) Regulations Effective Date also includes the final 401(m) regulations as the context requires.

1.29 **401(k) Plan.** 401(k) Plan means the 401(k) Plan the Employer establishes under a 401(k) Plan Adoption Agreement. The Plan as the Employer elects under its 401(k) Adoption Agreement may be a Traditional 401(k) Plan, a Safe Harbor 401(k) Plan or a SIMPLE 401(k) Plan. A 401(k) Plan is also a Profit Sharing Plan for purposes of applying the Plan terms, except as to Elective Deferrals, Matching Contributions or otherwise where the Plan specifies provisions which apply either to such Contributions Types or to the overall Plan on account of its status as a 401(k) Plan.

(A) Traditional 401(k) Plan. A Traditional 401(k) Plan is a 401(k) Plan under which Elective Deferrals are subject to nondiscrimination testing under the ADP test and any Matching Contributions and Employee Contributions also are subject to nondiscrimination testing under the ACP test.

(B) Safe Harbor 401(k) Plan. A Safe Harbor 401(k) Plan is a 401(k) Plan under which Elective Deferrals are not subject to nondiscrimination testing under the ADP test because the Plan satisfies the ADP test safe harbor. Any Matching Contributions are subject to the ACP test unless the Plan also satisfies the ACP test safe harbor. Any Employee Contributions are subject to the ACP test.

(C) SIMPLE 401(k) Plan. A SIMPLE 401(k) Plan is a 401(k) Plan which satisfies the contribution and other requirements in Section 3.10 and which is not subject to nondiscrimination testing or certain other requirements as provided in Section 3.10.

1.30 **401(m) Plan.** 401(m) Plan means the 401(m) plan, if any, the Employer establishes under its Adoption Agreement. The definitions under Sections 1.29(A), (B), and (C) also apply as to a 401(m) Plan.

1.31 **Hour of Service.** Hour of Service means:

(i) Paid and duties. Each Hour of Service for which the Employer, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment, for the performance of duties. The Plan Administrator credits Hours of Service under this Paragraph (i) to the Employee for the computation period in which the Employee performs the duties, irrespective of when paid;

(ii) Back pay. Each Hour of Service for back pay, irrespective of mitigation of damages, to which the Employer has agreed or for which the Employee has received an award. The Plan Administrator credits Hours of Service under this Paragraph (ii) to the Employee for the computation period(s) to which the award or the agreement pertains rather than for the computation period in which the award, agreement or payment is made; and

(iii) Payment but no duties. Each Hour of Service for which the Employer, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment (irrespective of whether the employment relationship is terminated), for reasons other than for the performance of duties during a computation period, such as leave of absence, vacation, holiday, sick leave, illness, incapacity (including disability), layoff, jury duty or military duty. The Plan Administrator will credit no more than 501 Hours of Service under this Paragraph (iii) to an Employee on account of any single continuous period during which the Employee does not perform any duties (whether or not such period occurs during a single computation period). The Plan Administrator credits Hours of Service under this Paragraph (iii) in accordance with the rules of paragraphs (b) and (c) of Labor Reg. §2530.200b-2, which the Plan, by this reference, specifically incorporates in full within this Paragraph (iii).

(iv) Crediting and computation. The Plan Administrator will not credit an Hour of Service under

more than one of the above Paragraphs (i), (ii) or (iii). A computation period for purposes of this Section 1.31 is the Plan Year, Year of Service period, Break in Service period or other period, as determined under the Plan provision for which the Plan Administrator is measuring an Employee's Hours of Service. The Plan Administrator will resolve any ambiguity with respect to the crediting of an Hour of Service in favor of the Employee.

(A) Method of Crediting Hours of Service. The Employer must elect in its Adoption Agreement the method the Plan Administrator will use in crediting an Employee with Hours of Service and the purpose for which the elected method will apply.

(1) Actual Method. Under the Actual Method as determined from records, an Employee receives credit for Hours of Service for hours worked and hours for which the Employer makes payment or for which payment is due from the Employer.

(2) Equivalency Method. Under an Equivalency Method, for each equivalency period for which the Plan Administrator would credit the Employee with at least one Hour of Service, the Plan Administrator will credit the Employee with: (a) 10 Hours of Service for a daily equivalency; (b) 45 Hours of Service for a weekly equivalency; (c) 95 Hours of Service for a semimonthly payroll period equivalency; and (d) 190 Hours of Service for a monthly equivalency.

(3) Elapsed Time Method. Under the Elapsed Time Method, an Employee receives credit for Service for the aggregate of all time periods (regardless of the Employee's actual Hours of Service) commencing with the Employee's Employment Commencement Date, or with his/her Re-Employment Commencement Date, and ending on the date a Break in Service begins. See Section 2.02(C)(4). In applying the Elapsed Time Method, the Plan Administrator will credit an Employee's Service for any Period of Severance of less than 12-consecutive months and will express fractional periods of Service in days.

(i) Elapsed Time — Break in Service. Under the Elapsed Time Method, a Break in Service is a Period of Severance of at least 12 consecutive months. In the case of an Employee who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date the Employee is otherwise absent from Service does not constitute a Break in Service.

(ii) Elapsed Time — Period of Severance. A Period of Severance is a continuous period of time during which the Employee is not employed by the Employer. The continuous period begins on the date the Employee retires, quits, is discharged, or dies or if earlier, the first 12-month anniversary of the date on which the Employee otherwise is absent from Service for any other reason (including disability, vacation, leave of absence, layoff, etc.).

(B) Maternity/Paternity Leave/Family and Medical Leave Act. Solely for purposes of determining whether an Employee incurs a Break in Service under any provision of this Plan, the Plan Administrator must credit Hours of

Service during the Employee's unpaid absence period: (1) due to maternity or paternity leave; or (2) as required under the Family and Medical Leave Act. An Employee is on maternity or paternity leave if the Employee's absence is due to the Employee's pregnancy, the birth of the Employee's child, the placement with the Employee of an adopted child, or the care of the Employee's child immediately following the child's birth or placement. The Plan Administrator credits Hours of Service under this Section 1.31(B) on the basis of the number of Hours of Service for which the Employee normally would receive credit or, if the Plan Administrator cannot determine the number of Hours of Service the Employee would receive credit for, on the basis of 8 hours per day during the absence period. The Plan Administrator will credit only the number (not exceeding 501) of Hours of Service necessary to prevent an Employee's Break in Service. The Plan Administrator credits all Hours of Service described in this Section 1.31(B) to the computation period in which the absence period begins or, if the Employee does not need these Hours of Service to prevent a Break in Service in the computation period in which his/her absence period begins, the Plan Administrator credits these Hours of Service to the immediately following computation period.

(C) Qualified Military Service. Hour of Service also includes any Service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code §414(u).

1.32 **IRS.** IRS means the Internal Revenue Service.

1.33 **Limitation Year.** Limitation Year means the consecutive month period the Employer specifies in its Adoption Agreement as applicable to allocations under Article IV. If the Employer elects the same Plan Year and Limitation Year, the Limitation Year is always a 12-consecutive month period even if the Plan Year is a short period, unless the short Plan Year results from an amendment, in which case, the Limitation Year also is a short year. If the Employer amends the Limitation Year to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year for which the Employer makes the amendment, creating a short Limitation Year.

1.34 **Matching Contribution.** Matching Contribution means a fixed or discretionary contribution the Employer makes on account of Elective Deferrals under a 401(k) Plan or on account of Employee Contributions. Matching contributions also include Participant forfeitures allocated on account of such Elective Deferrals or Employee Contributions.

(A) Fixed Matching Contribution. Fixed Matching Contribution means a Matching Contribution which the Employer, subject to satisfaction of allocation conditions, if any, must make pursuant to a formula in the Adoption Agreement. Under the formula, the Employer contributes a specified percentage or dollar amount on behalf of a Participant based on that Participant's Elective Deferrals or Employee Contributions eligible for a match.

(B) Discretionary Matching Contribution. Discretionary Matching Contribution means a Matching Contribution

which the Employer in its sole discretion elects to make to the Plan. The Employer retains discretion over the Discretionary Matching Contribution rate or amount, the limit(s) on Elective Deferrals or Employee Contributions subject to match, the per Participant match allocation limit(s), the Participants who will receive the allocation, and the time period applicable to any matching formula(s) (collectively, the "matching formula"), except as the Employer otherwise elects in its Adoption Agreement.

(C) QMAC. QMAC means a qualified matching contribution which is 100% Vested at all times and which is subject to the distribution restrictions described in Section 6.01(C)(4)(b). Matching Contributions are not 100% Vested at all times if the Employee has a 100% Vested interest solely because of his/her Years of Service taken into account under a vesting schedule. Any Matching Contributions allocated to a Participant's QMAC Account under the Plan automatically satisfy and are subject to the QMAC definition.

(D) Regular Matching Contribution. A Regular Matching Contribution is a Matching Contribution which is not a QMAC, a Safe Harbor Matching Contribution or an Additional Matching Contribution.

(E) Basic Matching Contribution. See Section 3.05(E)(4).

(F) Enhanced Matching Contribution. See Section 3.05(E)(5).

(G) Additional Matching Contribution. See Section 3.05(F)(1).

(H) SIMPLE Matching Contribution. See Section 3.10(E)(1).

(I) Safe Harbor Matching Contribution. See Section 3.05(E)(3).

1.35 **Money Purchase Pension Plan/Money Purchase Pension Contribution.** Money Purchase Pension Plan means the Money Purchase Pension Plan the Employer establishes under a Money Purchase Pension Plan Adoption Agreement. The Employer Contribution to its Money Purchase Pension Plan is a Money Purchase Pension Contribution. The Employer will make its Money Purchase Pension Contribution as the Employer elects in its Adoption Agreement.

1.36 **Named Fiduciary.** The Named Fiduciary is the Employer. The Employer in writing also may designate the Plan Administrator (if the Plan Administrator is not the Employer) and other persons as additional Named Fiduciaries. See Section 8.03. If the Plan is a restated Plan and under the prior plan document a different Named Fiduciary is in place, this Section 1.36 becomes effective on the date the Employer executes this restated Plan unless the Employer designates otherwise in writing.

1.37 **Nonelective Contribution.** Nonelective Contribution means a fixed or discretionary Employer Contribution which is not a Matching Contribution, a Money Purchase Pension Contribution or a Target Benefit Contribution.

(A) Fixed Nonelective Contribution. Fixed Nonelective Contribution means a Nonelective Contribution which the Employer, subject to satisfaction of allocation conditions, if any, must make pursuant to a formula (based on Compensation of Participants who will receive an allocation of the contributions or otherwise) in the Adoption Agreement. See 3.04(A)(2).

(B) Discretionary Nonelective Contribution. Discretionary Nonelective Contribution means a Nonelective Contribution which the Employer in its sole discretion elects to make to the Plan. See 3.04(A)(1).

(C) QNEC. QNEC means a qualified nonelective contribution which is 100% Vested at all times and which is subject to the distribution restrictions described in Section 6.01(C)(4)(b). Nonelective Contributions are not 100% Vested at all times if the Employee has a 100% Vested interest solely because of his/her Years of Service taken into account under a vesting schedule. Any Nonelective Contributions allocated to a Participant's QNEC Account under the Plan automatically satisfy and are subject to the QNEC definition.

(D) SIMPLE Nonelective Contribution. See Section 3.10(E)(1).

(E) Safe Harbor Nonelective Contribution. See Section 3.05(E)(2).

1.38 Opinion Letter. Opinion Letter means an IRS issued letter as to the acceptability of the form of a Prototype Plan as defined in Section 4.06 of Rev. Proc. 2005-16.

1.39 Participant. Participant means an Eligible Employee who becomes a Participant in the Plan or as to any Contribution Type as the context requires, in accordance with the provisions of Section 2.01.

1.40 Plan. Plan means the retirement plan established or continued by the Employer in the form of this Prototype Plan or Volume Submitter Plan, including the Adoption Agreement under which the Employer has elected to establish this Plan. The Employer must designate the name of the Plan in its Adoption Agreement. An Employer may execute more than one Adoption Agreement offered under this Plan, each of which will constitute a separate Plan and Trust established or continued by that Employer. All section references within this basic plan document are Plan section references unless the context clearly indicates otherwise. The Plan includes any Appendix permitted by the basic plan document or by the Employer's Adoption Agreement and which the Employer attaches to its Adoption Agreement.

(A) Multiple Employer Plan (Article XII). Multiple Employer Plan means a Plan in which at least one Employer which is not a Related Employer participates. This Plan may be a Multiple Employer Plan only if maintained on a Volume Submitter Adoption Agreement. Article XII of the Plan applies to a Multiple Employer Plan, but otherwise does not apply to the Plan.

(B) Frozen Plan. See Section 3.01(J).

1.41 Plan Administrator. Plan Administrator means the Employer unless the Employer designates another person or persons to hold the position of Plan Administrator. Any person(s) the Employer appoints as Plan Administrator may or may not be Participants in the Plan. In addition to its other duties, the Plan Administrator has full responsibility for the Plan's compliance with the reporting and disclosure rules under ERISA. If the Employer is the Plan Administrator, any requirement under the Plan for communication between the Employer and the Plan Administrator automatically is deemed satisfied, and the Employer has discretion to determine the manner of documenting any decision deemed to be communicated under this provision.

1.42 Plan Year. Plan Year means the consecutive month period the Employer specifies in its Adoption Agreement.

1.43 Practitioner. Practitioner means the sponsor as to its Employer clients of the Volume Submitter Plan and as defined in Section 13.04 of Rev. Proc. 2005-16.

1.44 Predecessor Employer/Predecessor Plan.

(A) Predecessor Employer. A Predecessor Employer is an employer that previously employed one or more of the Employees.

(B) Predecessor Plan. A Predecessor Plan is a Code §401(a) or §403(a) qualified plan the Employer terminated within the five-year period beginning before or after the Employer establishes this Plan, as described in Treas. Reg. §1.411(a)-5(b)(3)(v)(B).

1.45 Prevailing Wage Contract/Contribution. Prevailing Wage Contract means a contract under which Employees are performing services subject to the Davis-Bacon Act, the McNamara-O'Hara Contract Service Act or any other federal, state or municipal prevailing wage law. A Prevailing Wage Contribution is a contribution the Employer makes to the Plan in accordance with a Prevailing Wage Contract. A Prevailing Wage Contribution is treated as a Nonelective Contribution or other Employer Contribution except as the Plan otherwise provides.

1.46 Profit Sharing Plan. Profit Sharing Plan means the Profit Sharing Plan the Employer establishes under a Profit Sharing Plan Adoption Agreement.

1.47 Protected Benefit. Protected Benefit means any accrued benefit described in Treas. Reg. §1.411(d)-4, including any optional form of benefit provided under the Plan which may not (except in accordance with such Regulations) be reduced, eliminated or made subject to Employer discretion.

1.48 Prototype Plan/Master Plan (M&P Plan). Prototype Plan means as described in Section 4.02 of Rev. Proc. 2005-16 or in any successor thereto under which each adopting Employer establishes a separate Trust. This Plan is not a Master Plan as described in Section 4.01 of Rev. Proc. 2005-16 under which unrelated adopting employers participate in a single funding medium (trust or custodial account). However, the Plan could be a Master Trust under DOL Reg. §2525.103-2(e). A Prototype Plan or a Master Plan must have an Opinion Letter as described in Section 4.06 of Rev. Proc. 2005-16.

1.49 **QDRO.** QDRO means a qualified domestic relations order under Code §414(p).

1.50 **Qualified Military Service.** Qualified Military Service means qualified military service as defined in Code §414(u)(5). Notwithstanding any provision in the Plan to the contrary, as to Qualified Military Service, the Plan will credit Service under Section 1.31(C), the Employer will make contributions to the Plan and the Plan will provide benefits in accordance with Code §414(u).

1.51 **Restated Plan.** A Restated Plan means a plan the Employer adopts in substitution for, and in amendment of, an existing plan, as the Employer elects in its Adoption Agreement. If a Participant incurs a Separation from Service or Severance from Employment before the Employer executes the Adoption Agreement as a Restated Plan, the provisions of the Restated Plan do not apply to the Participant unless he/she has an Account Balance as of the execution date or unless the Employer rehires the Participant.

1.52 **Rollover Contribution.** A Rollover Contribution means an amount of cash or property (including a participant loan from another plan) which the Code permits an Eligible Employee or Participant to transfer directly or indirectly to this Plan from another Eligible Retirement Plan (or vice versa) within the meaning of Code §402(c)(8)(B) and Section 6.08(F)(2). A Rollover Contribution will be made to the Plan and not to a Designated IRA within the Plan under Section 3.12, if any.

1.53 **Safe Harbor Contribution.** Safe Harbor Contribution means a Safe Harbor Nonelective Contribution or a Safe Harbor Matching Contribution as the Employer elects in its Adoption Agreement. See Sections 3.05(E) (2) and (3).

1.54 **Salary Reduction Agreement.** A Salary Reduction Agreement means a Participant's written election to make Elective Deferrals to the Plan (including a Contrary Election under Section 3.02(B)(4)), made on the form the Plan Administrator provides for this purpose.

(A) **Effective Date.** A Salary Reduction Agreement may not be effective earlier than the following date which occurs last: (1) under Article II, the Participant's Entry Date or, in the case of a re-hired Employee, his/her re-participation date; (2) the execution date of the Salary Reduction Agreement; (3) the date the Employer adopts the 401(k) Plan; or (4) the Effective Date of the 401(k) Plan (or Elective Deferral provision within the Plan).

(B) **Compensation.** A Salary Reduction Agreement must specify the dollar amount of Compensation or the percentage of Compensation the Participant wishes to defer. The Salary Reduction Agreement: (1) applies only to Compensation for Elective Deferral allocation as the Employer elects in its Adoption Agreement and which becomes currently available after the effective date of the Salary Reduction Agreement; and (2) applies to all or to such Elective Deferral Compensation as the Salary Reduction Agreement indicates, including any Participant elections made in the Salary Reduction Agreement.

(C) **Additional Rules.** The Plan Administrator in the Plan's Salary Reduction Agreement form, or in a Salary Reduction Agreement policy will specify additional rules and restrictions applicable to a Participant's Salary Reduction Agreement, including but not limited to those rules regarding changing or revoking a Salary Reduction Agreement. Any such rules and restrictions must be consistent with the Plan and with Applicable Law.

1.55 **Separation from Service/Severance from Employment.** Separation from Service means an event after which the Employee no longer has an employment relationship with the Employer maintaining this Plan or with a Related Employer. The Plan applies Separation from Service for all purposes except as otherwise provided. For purposes of distribution of Restricted 401(k) Accounts, the application of Post-Severance Compensation and top-heavy look-back period distributions, the plan will apply the definition of Severance from Employment under EGTRRA §646 (as modified for Code §415 purposes in applying the parent-subsidiary controlled group rules).

1.56 **Service.** Service means any period of time the Employee is in the employ of the Employer, including any period the Employee is on an unpaid leave of absence authorized by the Employer under a uniform, nondiscriminatory policy applicable to all Employees.

(A) **Related Employer Service.** See Section 1.23(C).

(B) **Predecessor Employer/Plan Service.** See Section 1.44. If the Employer maintains (by adoption, plan merger or Transfer) the plan of a Predecessor Employer, service of the Employee with the Predecessor Employer is Service with the Employer. If the Employer maintained a Predecessor Plan, for purposes of vesting Service, the Plan Administrator must count service credited to any Employee covered under the Predecessor Plan. If the Employer in its Adoption Agreement elects to disregard vesting Service prior to the time that the Employer maintained the Plan, the Plan Administrator will treat a Predecessor Plan as the Plan for purposes of such election.

(C) **Elective Service Crediting.** If the Employer does not maintain the plan of a Predecessor Employer, the Plan does not credit Service with the Predecessor Employer, unless the Employer in its Adoption Agreement (or in a Participation Agreement, if applicable) elects to credit designated Predecessor Employer Service and specifies the purposes for which the Plan will credit service with that Predecessor Employer. Unless the Employer under its Adoption Agreement provides for this purpose specific Entry Dates, an Employee who satisfies the Plan's eligibility condition(s) by reason of the crediting of predecessor service will enter the Plan in accordance with the provisions of Article II as if the Employee were a re-employed Employee on the first day the Plan credits predecessor service.

(D) **Standardized Plan.** If the Employer's Plan is a Standardized Plan, the Plan limits the elective crediting of past Predecessor Employer Service to the period which does not exceed 5 years immediately preceding the year in which an amendment crediting such service becomes effective, such credit must be granted to all Employees on a reasonably uniform basis, and the crediting must otherwise comply with Treas. Reg. §1.401(a)(4)-5(a)(3).

1.57 **SIMPLE Contribution.** SIMPLE Contribution means a SIMPLE Nonelective Contribution or a SIMPLE Matching Contribution. See Section 3.10(E).

1.58 **Sponsor.** Sponsor means the sponsor of this Prototype Plan as to the Sponsor's adopting Employer clients and as defined in Section 4.07 of Rev. Proc. 2005-16.

1.59 **Successor Plan.** Successor Plan means a plan in which at least 50% of the Eligible Employees for the first Plan Year were eligible under a cash or deferred arrangement maintained by the Employer in the prior year, as described in Treas. Reg. §1.401k-2(c)(2)(iii).

1.60 **Target Benefit Plan/Target Benefit Contribution.** Target Benefit Plan means the Target Benefit Plan the Employer establishes under the Target Benefit Plan Adoption Agreement. The Employer Contribution to its Target Benefit Plan is a Target Benefit Contribution. The Employer will make its Target Benefit Contribution as the Employer elects in its Adoption Agreement.

1.61 **Taxable Year.** Taxable Year means the taxable year of a Participant or of the Employer as the context requires.

1.62 **Transfer.** Transfer means the Trustee's movement of Plan assets from the Plan to another plan (or vice versa) directly as between the trustees and not by means of a distribution. A Transfer may be an Elective Transfer or a Nonelective Transfer. See Section 11.06. A Direct Rollover under Section 6.08(F)(1) is not a Transfer.

1.63 **Trust.** Trust means the separate Trust created under the Plan.

1.64 **Trust Fund.** Trust Fund means all property of every kind acquired by the Plan and held by the Trust, other than incidental benefit insurance contracts.

1.65 **Trustee/Custodian.** Trustee or Custodian means the person or persons who as Trustee or Custodian execute the Adoption Agreement, or any successor in office who in writing accepts the position of Trustee or Custodian. The Employer must designate in its Adoption Agreement whether the Trustee will administer the Trust as a discretionary Trustee or as a nondiscretionary Trustee. See Article VIII. If the Sponsor or Practitioner is a bank, savings and loan association, credit union, mutual fund, insurance company, or other institution qualified to serve as Trustee, a person other than the Sponsor or Practitioner (or its affiliate) may not serve as Trustee or as Custodian of the Plan without the written consent of the Sponsor or Practitioner.

1.66 **Valuation Date.** Valuation Date means the Accounting Date, such additional dates as the Employer in its Adoption Agreement may elect, and any other date that the Plan Administrator designates for the valuation of the Trust Fund.

1.67 **Vested.** Vested means a Participant or a Beneficiary has an unconditional claim, legally enforceable against the Plan, to the Participant's Account Balance or Accrued Benefit or to a portion thereof if not 100% Vested. Vesting means the degree to which a Participant is Vested in one or more Accounts.

1.68 **USERRA.** USERRA means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

1.69 **Volume Submitter Plan.** Volume Submitter Plan means as described in Section 13.01 of Rev. Proc. 2005-16 or in any successor thereto. A Volume Submitter Plan must have an Advisory Letter as described in Section 13.03 of Rev. Proc. 2005-16.

**ARTICLE II
ELIGIBILITY AND PARTICIPATION**

2.01 **ELIGIBILITY.** Each Eligible Employee becomes a Participant in the Plan in accordance with the eligibility conditions the Employer elects in its Adoption Agreement. The Employer may elect different age and service conditions for different Contribution Types under the Plan.

(A) Maximum Age and Years of Service. For purposes of an Eligible Employee's participation in the Plan, the Plan may not impose an age condition exceeding age 21 and may not require completion of more than one Year of Service, except under Section 2.02(E).

(B) New Plan. Any Eligible Employee who has satisfied the Plan's eligibility conditions and who has reached his/her Entry Date as of the Effective Date is eligible to participate as of the Effective Date, assuming the Employer continues to employ the Employee on that date. Any other Eligible Employee becomes eligible to participate: (1) upon satisfaction of the eligibility conditions and reaching his/her Entry Date; or (2) upon reaching his/her Entry Date if such Employee had already satisfied the eligibility conditions prior to the Effective Date.

(C) Restated Plan. If this Plan is a Restated Plan, each Employee who was a Participant in the Plan on the day before the restated Effective Date continues as a Participant in the Restated Plan, irrespective of whether he/she satisfies the eligibility conditions of the Restated Plan, unless the Employer provides otherwise in its Adoption Agreement.

(D) Prevailing Wage Contribution. If the Employer makes Prevailing Wage Contributions to the Plan, except as the Prevailing Wage Contract otherwise provides, no minimum age or service conditions apply to an Eligible Employee's eligibility to receive Prevailing Wage Contributions under the Plan. The Employer's Adoption Agreement elections imposing age and service eligibility conditions apply to such an Employee as to non-Prevailing Wage Contributions under the Plan.

(E) Special Eligibility Effective Date (Dual Eligibility). The Employer in its Adoption Agreement may elect to provide a special Effective Date for the Plan's eligibility conditions, with the effect that such conditions may apply only to Employees who are employed by the Employer after a specified date.

2.02 **APPLICATION OF SERVICE CONDITIONS.** The Plan Administrator will apply this Section 2.02 in administering the Plan's eligibility service condition(s), if any.

(A) Definition of Year of Service. A Year of Service for purposes of an Employee's participation in the Plan, means the applicable Eligibility Computation Period under Section 2.02(C), during which the Employee completes the number of Hours of Service (not exceeding 1,000) the Employer specifies in its Adoption Agreement, without regard to whether the Employer continues to employ the Employee during the entire Eligibility Computation Period.

(B) Counting Years of Service. For purposes of an Employee's participation in the Plan, the Plan counts all of an Employee's Years of Service, except as provided in Section 2.03.

(C) Initial and Subsequent Eligibility Computation Periods. If the Plan requires one Year of Service for eligibility and an Employee does not complete one Year of Service during the Initial Eligibility Computation Period, the Plan measures Subsequent Eligibility Computation Periods in accordance with the Employer's election in its Adoption Agreement. If the Plan measures Subsequent Eligibility Computation Periods on a Plan Year basis, an Employee who receives credit for the required number of Hours of Service during the Initial Eligibility Computation Period and also during the first applicable Plan Year receives credit for two Years of Service under Article II.

(1) Definition of Eligibility Computation Period. An Eligibility Computation Period is a 12-consecutive month period.

(2) Definition of Initial Eligibility Computation Period. The Initial Eligibility Computation Period is the Employee's Anniversary Year which begins on the Employee's Employment Commencement Date.

(3) Definition of Anniversary Year. An Employee's Anniversary Year is the 12-consecutive month period beginning on the Employee's Employment Commencement Date or beginning on anniversaries thereof.

(4) Definitions of Employment Commencement Date/Re-Employment Commencement Date. An Employee's Employment Commencement Date is the date on which the Employee first performs an Hour of Service for the Employer. An Employee's Re-Employment Commencement Date is the date on which the Employee first performs an Hour of Service for the Employer after the Employer re-employs the Employee.

(5) Definition of Subsequent Eligibility Computation Period. A Subsequent Eligibility Computation Period is any Eligibility Computation Period after the Initial Eligibility Computation Period, as the Employer elects in its Adoption Agreement.

(D) Entry Date. The Employer in its Adoption Agreement elects the Entry Date(s) and elects whether such Entry Date(s) are retroactive, coincident with or next following an Employee's satisfaction of the Plan's eligibility conditions. The Employer may elect to apply different Entry Dates to different Contribution Types. If the Employer makes Prevailing Wage Contributions to the Plan, except as the Prevailing Wage Contract otherwise provides, an Eligible Employee's Entry Date with regard to such contributions is the Employee's Employment Commencement Date. The Employer's Adoption Agreement elections regarding Entry Dates apply to such an Employee as to non-Prevailing Wage Contributions under the Plan.

(1) **Definition of Entry Date.** See Section 1.25.

(2) **Maximum delay in participation.** An Entry Date may not result in an Eligible Employee who has satisfied the Plan's eligibility conditions being held out of Plan participation longer than six months, or if earlier, the first day of the next Plan Year, following completion of the Code §410(a) maximum eligibility requirements.

(E) **Alternative Service Conditions.** The Employer in its Adoption Agreement may elect to impose for eligibility a condition of less than one Year of Service or of more than one Year of Service, but not exceeding two Years of Service. If the Employer elects an alternative Service condition to one Year of Service or two Years of Service, the Employer must elect in its Adoption Agreement the Hour of Service and other requirement(s), if any, after the Employee completes one Hour of Service. Under any alternative Service condition election, the Plan may not require an Employee to complete more than one Year of Service (1,000 Hours of Service in 12-consecutive months) or two Years of Service if applicable.

(1) **Vesting requirement.** If the Employer elects to impose more than a one Year of Service eligibility condition, the Plan Administrator must apply 100% vesting on any Employer Contributions (and the resulting Accounts) subject to that eligibility condition.

(2) **One Year of Service maximum for specified Contributions.** The Plan may not require more than one Year of Service for eligibility for an Eligible Employee to make Elective Deferrals, to receive Safe Harbor Contributions or to receive SIMPLE Contributions.

(F) **Equivalency or Elapsed Time.** If the Employer in its Adoption Agreement elects to apply the Equivalency Method or the Elapsed Time Method in applying the Plan's eligibility Service condition, the Plan Administrator will credit Service in accordance with Sections 1.31(A)(2) and (3).

2.03 BREAK IN SERVICE – PARTICIPATION. The Plan Administrator will apply this Section 2.03 if any Break in Service rule applies under the Plan.

(A) **Definition of Break in Service.** For purposes of this Article II, an Employee incurs a Break in Service if during any applicable Eligibility Computation Period he/she does not complete more than 500 Hours of Service with the Employer. The Eligibility Computation Period under this Section 2.03(A) is the same as the Eligibility Computation Period the Plan uses to measure a Year of Service under Section 2.02. If the Plan applies the Elapsed Time Method of crediting Service under Section 1.31(A)(3), a Participant incurs a Break in Service if the Participant has a Period of Severance of at least 12 consecutive months.

(B) **Two Year Eligibility.** If the Employer under the Adoption Agreement elects a two Years of Service eligibility condition, an Employee who incurs a one year Break in Service prior to completing two Years of Service:

(1) is a new Employee on the date he/she first performs an Hour of Service for the Employer after the Break in Service; (2) the Plan disregards the Employee's Service prior to the Break in Service; and (3) the Employee establishes a new Employment Commencement Date for purposes of the Initial Eligibility Computation Period under Section 2.02(C).

(C) **One Year Hold-Out Rule-Participation.** The Employer in its Adoption Agreement must elect whether to apply the "one year hold-out" rule under Code §410(a)(5)(C). Under this rule, a Participant will incur a suspension of participation in the Plan after incurring a one year Break in Service and the Plan disregards a Participant's Service completed prior to a Break in Service until the Participant completes one Year of Service following the Break in Service. The Plan suspends the Participant's participation in the Plan as of the first day of the Plan Year following the Plan Year in which the Participant incurs the Break in Service.

(1) **Completion of one Year of Service.** If a Participant completes one Year of Service following his/her Break in Service, the Plan restores the Participant's pre-break Service and the Participant resumes active participation in the Plan retroactively to the first day of the Eligibility Computation Period in which the Participant first completes one Year of Service following his/her Break in Service.

(2) **Eligibility Computation Period.** The Plan Administrator measures the Initial Eligibility Computation period under this Section 2.03(C) from the date the Participant first receives credit for an Hour of Service following the one year Break in Service. The Plan Administrator measures any Subsequent Eligibility Computation Periods, if necessary, in a manner consistent with the Employer's Eligibility Computation Period election in its Adoption Agreement, using the Re-Employment Commencement Date in determining the Anniversary Year if applicable.

(3) **Election to limit application to separated Employees.** If the Employer elects to apply the one year hold-out rule, the Employer also may elect in its Adoption Agreement to limit application of the rule only to a Participant who has incurred a Separation from Service.

(4) **Application to Employee who did not enter.** The Plan Administrator also will apply the one year hold-out rule, if applicable, to an Employee who satisfies the Plan's eligibility conditions, but who incurs a Separation from Service and a one year Break in Service prior to becoming a Participant.

(5) **No effect on vesting or Earnings.** This Section 2.03(C) does not affect a Participant's vesting credit under Article V and, during a suspension period, the Participant's Account continues to share fully in Earnings under Article VII.

(6) **No restoration under two year break rule.** The Plan Administrator in applying this Section 2.03(C) does not restore any Service disregarded under the Break in Service rule of Section 2.03(B).

(7) **No application to Elective Deferrals in 401(k) Plan.** If the Plan is a 401(k) Plan and the Employer in its Adoption Agreement elects to apply the Section 2.03(C) one year hold-out rule, the Plan Administrator will not apply such provisions to the Elective Deferral portion of the Plan.

(8) **USERRA.** An Employee who has completed Qualified Military Service and who the Employer has rehired under USERRA, does not incur a Break in Service under the Plan by reason of the period of such Qualified Military Service.

(D) **Rule of Parity — Participation.** For purposes of Plan participation, the Plan does not apply the “rule of parity” under Code §410(a)(5)(D), unless the Employer in Appendix B elects to apply the rule of parity.

2.04 PARTICIPATION UPON RE-EMPLOYMENT.

(A) **Rehired Participant/Immediate Re-Entry.** A Participant who incurs a Separation from Service will re-enter the Plan as a Participant on his/her Re-Employment Commencement Date (provided he/she is not an Excluded Employee), subject to any Break in Service rule, if applicable, under Section 2.03.

(B) **Rehired Eligible Employee Who Had Satisfied Eligibility.** An Eligible Employee who satisfies the Plan’s eligibility conditions, but who incurs a Separation from Service prior to becoming a Participant, subject to any Break in Service rule, if applicable, under Section 2.03, will become a Participant on the later of: (1) the Entry Date on which he/she would have entered the Plan had he/she not incurred a Separation from Service; or (2) his/her Re-Employment Commencement Date.

(C) **Rehired Eligible Employee Who Had Not Satisfied Eligibility.** An Eligible Employee who incurs a Separation from Service prior to satisfying the Plan’s eligibility conditions becomes a Participant in accordance with the Employer’s Adoption Agreement elections. The Plan Administrator, for purposes of applying any shift in the Eligibility Computation Period, takes into account the Employee’s prior Service and the Employee is not treated as a new hire.

2.05 **CHANGE IN EMPLOYMENT STATUS.** The Plan Administrator will apply this Section 2.05 if the Employer in its Adoption Agreement elected to exclude any Employees as Excluded Employees.

(A) **Participant Becomes an Excluded Employee.** If a Participant has not incurred a Separation from Service but becomes an Excluded Employee (as to any or all Contribution Types), during the period of exclusion the Excluded Employee: (i) will not share in the allocation of the applicable Employer Contributions (including a Top-Heavy Minimum Allocation under Section 10.02 if the Employee is excluded as to all Contribution Types) or Participant forfeitures, based on Compensation paid to the Excluded Employee during the period of exclusion; (ii) may not make Employee Contributions, Rollover Contributions or Designated IRA Contributions; and (iii) if

the Plan is a 401(k) Plan and the Participant is an Excluded Employee as to Elective Deferrals, may not make Elective Deferrals as to Compensation paid to the Excluded Employee during the period of exclusion.

(1) **Vesting, accrual, Break in Service and Earnings.** A Participant who becomes an Excluded Employee under this Section 2.05(A) continues: (a) to receive Service credit for vesting under Article V for each included vesting Year of Service; (b) to receive Service credit for applying any allocation conditions under Section 3.06 as to Employer Contributions accruing for any non-excluded period and as to Contribution Types for which the Participant is not an Excluded Employee; (c) to receive Service credit in applying the Break in Service rules; and (d) to share fully in Earnings under Article VII.

(2) **Resumption of Eligible Employee status.** If a Participant who becomes an Excluded Employee subsequently resumes status as an Eligible Employee, the Participant will participate in the Plan immediately upon resuming eligible status, subject to the Break in Service rules, if applicable, under Section 2.03.

(B) **Excluded Employee Becomes Eligible.** If an Excluded Employee who is not a Participant becomes an Eligible Employee, he/she will participate immediately in the Plan if he/she has satisfied the Plan’s eligibility conditions and would have been a Participant had he/she not been an Excluded Employee during his/her period of Service. An Excluded Employee receives Service credit for eligibility, for allocation conditions under Section 3.06 (but the Plan disregards Compensation paid while excluded) and for vesting under Article V for each included vesting Year of Service, notwithstanding the Employee’s Excluded Employee status.

2.06 PARTICIPATION OPT-OUT.

(A) **Volume Submitter Plan.** If the Plan is a Volume Submitter Plan, the Plan Administrator may elect to permit an Eligible Employee to elect irrevocably to not participate in the Plan (to “opt-out”). The Eligible Employee prior to his/her Entry Date and prior to first becoming eligible under any plan of the Employer as described in Code §219(g)(5)(A), including terminated plans, must file an opt-out election in writing with the Plan Administrator on a form the Plan Administrator provides for this purpose. An Employee’s election not to participate, pursuant to this Section 2.06(A), includes his/her right to make Elective Deferrals, Employee Contributions, Rollover Contributions or Designated IRA Contributions, unless the Plan Administrator’s opt-out form permits an Eligible Employee to opt-out of specified Contribution Types prior to becoming eligible to participate in such Contribution Type. A Participant’s mere failure to make Elective Deferrals or Employee Contributions is not an opt-out under this Section 2.06(A).

(B) Prototype Plan. If the Plan is a Prototype Plan, the Plan does not permit an otherwise Eligible Employee or any Participant to elect to opt-out. However, if the Plan is a Nonstandardized Plan, an Eligible Employee may opt-out in accordance with Section 2.06(A) provided: (1) the Plan

terms as in effect prior to restatement under this Plan permitted the opt-out; and (2) the Employee executes the opt-out prior to the date of the Employer's execution of this Plan as a Restated Plan.

**ARTICLE III
PLAN CONTRIBUTIONS AND FORFEITURES**

3.01 **CONTRIBUTION TYPES.** The Employer in its Adoption Agreement will elect the Contribution Type (s) and any formulas, allocation methods, conditions and limitations applicable thereto, except where the Plan expressly reserves discretion to the Employer or to the Plan Administrator.

(A) Application of Limits. The Employer's contribution to the Trust for any Plan Year is subject to Article IV limits and other Plan limits.

(B) Compensation for Allocations/Limit. The Plan Administrator will allocate all Employer Contributions and Elective Deferrals based on the definition of Compensation under Section 1.11 the Employer elects in its Adoption Agreement for a particular Contribution Type. The Plan Administrator in allocating such contributions must limit each Participant's Compensation to the amount described in Section 1.11(E).

(C) Allocation Conditions. The Plan Administrator will allocate Employer Contributions only to those Participants who satisfy the Plan's allocation conditions under Section 3.06, if any, for the Contribution Type being allocated.

(D) Top-Heavy. If the Plan is top-heavy, the Employer will satisfy the Top-Heavy Minimum Allocation requirements in accordance with Article X.

(E) Net Profit Not Required. The Employer need not have net profits to make a contribution under the Plan, unless the Employer in its Adoption Agreement specifies a fixed formula based on net profits.

(F) Form of Contribution. Subject to the consent of the Trustee under Article VIII, the Employer may make Employer Contributions to a Profit Sharing Plan, to a 401(k) Plan or to a 401(m) Plan (excluding Elective Deferrals or Employee Contributions) in the form of property instead of cash, provided the contribution of property is not a prohibited transaction under Applicable Law. The Employer may not make contributions in the form of property to its Money Purchase Pension Plan or to its Target Benefit Plan.

(G) Time of Payment of Contribution. The Employer may pay to the Trust its Employer Contributions for any Plan Year in one or more installments, without interest. Unless otherwise required by applicable contract or Applicable Law, the Employer may make an Employer Contribution to the Plan for a particular Plan Year at such time(s) as the Employer in its sole discretion determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate to the Plan Administrator and to the Trustee the Plan Year for which the Employer is making the Employer Contribution. The Plan Administrator will allocate the contribution accordingly.

(H) Return of Employer Contribution. The Employer contributes to the Plan on the condition its contribution is

not due to a mistake of fact and the IRS will not disallow the deduction of the Employer Contribution.

(1) Request for contribution return/timing. The Trustee, upon written request from the Employer, must return to the Employer the amount of the Employer Contribution made by the Employer by mistake of fact or the amount of the Employer Contribution disallowed as a deduction under Code §404. The Trustee will not return any portion of the Employer Contribution under the provisions of this Section 3.01(H) more than one year after: (a) the Employer made the contribution by mistake of fact; or (b) the IRS's disallowance of the contribution as a deduction, and then, only to the extent of the disallowance.

(2) Earnings. The Trustee will not increase the amount of the Employer Contribution returnable under this Section 3.01(H) for any Earnings increases attributable to the contribution, but the Trustee will decrease the Employer Contribution returnable for any Earnings losses attributable thereto.

(3) Evidence. The Trustee may require the Employer to furnish the Trustee whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned is properly returnable under Applicable Law.

(I) Money Purchase Pension and Defined Benefit Plans. If the Employer's Plan is a Money Purchase Pension Plan and the Employer also maintains a defined benefit pension plan, notwithstanding the Money Purchase Pension Contribution formula in the Employer's Adoption Agreement, the Employer's required contribution to its Money Purchase Pension Plan for a Plan Year is limited to the amount which the Employer may deduct under Code §404(a)(7). If the Employer under Code §404(a)(7) must reduce its Money Purchase Pension Plan contribution, the Plan Administrator will allocate the reduced contribution amount in accordance with the Plan's allocation formula.

(J) Frozen Plan. The Employer in its Adoption Agreement may elect to treat the Plan as a Frozen Plan. Under a Frozen Plan, the Employer and the Participants will not make any contributions to the Plan. A Frozen Plan remains subject to all qualification and reporting requirements except as Applicable Law otherwise provides and the Plan provisions (other than those relating to ongoing permitted or required contributions) continue in effect until the Employer terminates the Plan. An Eligible Employee will not become a Participant in a Frozen Plan.

3.02 **ELECTIVE DEFERRALS.** If the Plan is a 401(k) Plan and the Employer in its Adoption Agreement elects to permit Elective Deferrals, the Plan Administrator will apply the provisions of this Section 3.02. A Participant's Elective Deferrals will be made pursuant to a Salary Reduction Agreement unless the Employer elects in its Adoption Agreement to apply the Automatic Deferral provision under Section 3.02(B) or the CODA provision under Section 3.02(C).

(A) Limitations. Except as described below regarding Catch-Up Deferrals, the Employer in its Adoption Agreement must elect the Plan limitations, if any, which apply to Elective Deferrals (or separately to Pre-Tax Deferrals or to Roth Deferrals, if applicable). Such Plan limitations are in addition to those mandatory limitations imposed under Article IV and under Applicable Law. In applying any such additional Plan limitation, the Plan Administrator will take into account the Compensation for Elective Deferral purposes the Employer elects in the Adoption Agreement. The Plan Administrator in the Salary Reduction Agreement form or in a Salary Reduction Agreement policy (see Section 1.54(C)) may specify additional rules and restrictions applicable to Salary Reduction Agreements. The Employer in a SIMPLE 401(k) Plan may not impose any Plan limit on Elective Deferrals except as provided under Code §408(p). See Section 3.05(C)(2) regarding limits on Elective Deferrals under a safe harbor plan. The Employer may elect a Plan limit in its Adoption Agreement, but if the Employer does not so elect, the Plan Administrator may establish or change a Plan limit on Elective Deferrals from time to time by providing notice to the Participants as is consistent with Applicable Law. Any such limit change made during a Plan Year applies only prospectively.

(B) Automatic Deferrals. The Employer in its Adoption Agreement will elect whether to apply or not apply the Automatic Deferral provisions of this Section 3.02(B).

(1) Definition of Automatic Deferral. An Automatic Deferral is an Elective Deferral that results from the operation of this Section 3.02(B). Under the Automatic Deferral, the Employer automatically will reduce by the Automatic Deferral Amount the Compensation of each Participant affected by the Automatic Deferral under Section 3.02(B)(3), except those Participants who timely make a Contrary Election under Section 3.02(B)(4).

(2) Definition of Automatic Deferral Amount/Increases. The Automatic Deferral Amount is the amount of Automatic Deferral which the Employer elects in its Adoption Agreement. The Employer in its Adoption Agreement may elect to apply a scheduled increase to the Automatic Deferral Amount. If a Participant subject to the Automatic Deferral elected, before the Effective Date of the Automatic Deferral, to defer an amount which is less than the Automatic Deferral Amount the Employer has elected in its Adoption Agreement, the Automatic Deferral Amount under this Section 3.02(B) includes only the incremental amount necessary to increase the Participant's Elective Deferral to equal the Automatic Deferral Amount, including any scheduled increases thereto.

(3) Employees or Participants subject to Automatic Deferral. If the Employer elects to apply the Automatic Deferral, the Employer in its Adoption Agreement will elect which Participants or Employees are affected by the Automatic Deferral on the Effective Date thereof and which Participants, if any, are not subject to the Automatic Deferral.

(4) Definition of Contrary Election. A Contrary Election is a Participant's election made after the Effective

Date of the Automatic Deferral not to defer any Compensation or to defer an amount which is more or less than the Automatic Deferral Amount.

(5) Effective Date of Contrary Election. A Participant's Contrary Election generally is effective as of the first payroll period which follows the Participant's Contrary Election. However, a Participant may make a Contrary Election which is effective: (a) for the first payroll period in which he/she becomes a Participant if the Participant makes a Contrary Election within a reasonable period following the Participant's Entry Date and before the Compensation to which the Election applies becomes currently available; or (b) for the first payroll period following the Effective Date of the Automatic Deferral, if the Participant makes a Contrary Election not later than the Effective Date of the Automatic Deferral. A Participant who makes a Contrary Election is not thereafter subject to the Automatic Deferral or to any scheduled increases thereto, even if the Participant later revokes or modifies the Contrary Election. A Participant's Contrary Election continues in effect until the Participant subsequently changes his/her Salary Reduction Agreement.

(6) Automatic Deferral election notice. If the Employer in its Adoption Agreement elects the Automatic Deferral, the Plan Administrator must provide a notice (consistent with Applicable Law) to each Eligible Employee which explains the effect of the Automatic Deferral and a Participant's right to make a Contrary Election, including the procedure and timing applicable to the Contrary Election. The Plan Administrator must provide the notice to an Eligible Employee a reasonable period prior to that Employee's commencement of participation in the Plan subject to the Automatic Deferral. The Plan Administrator also must provide Participants with the effective opportunity to make a Contrary Election at least once during each Plan Year.

(7) Treatment of Automatic Deferrals/Roth or Pre-Tax. The Plan Administrator will treat Automatic Deferrals as Elective Deferrals for all purposes under the Plan, including application of limitations, nondiscrimination testing and distributions. If the Employer in its Adoption Agreement has elected to permit Roth Deferrals, Automatic Deferrals are Pre-Tax Deferrals unless the Employer in Appendix B elects otherwise.

(C) Cash or Deferred Arrangement (CODA). The Employer in its Adoption Agreement may elect to apply the CODA provisions of this Section 3.02(C). Under a CODA, a Participant may elect to receive in cash his/her proportionate share of the Employer's cash or deferred contribution, in accordance with the Employer's Adoption Agreement election. A Participant's proportionate share of the Employer's cash or deferred contribution is the percentage of the total cash or deferred contribution which bears the same ratio that the Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year. For purposes of determining each Participant's proportionate share of the cash or deferred contribution, a Participant's Compensation is his/her Compensation for Nonelective Contribution allocations (unless the Employer elects otherwise in its Adoption Agreement) as determined under Section 1.11,

excluding any effect the proportionate share may have on the Participant's Compensation for the Plan Year. The Plan Administrator will determine the proportionate share prior to the Employer's actual contribution to the Trust, to provide the Participants with the opportunity to file cash elections. The Employer will pay directly to the Participant the portion of his/her proportionate share the Participant has elected to receive in cash.

(D) Catch-Up Deferrals. The Employer in its Adoption Agreement will elect whether or not to permit Catch-Up Eligible Participants to make Catch-Up Deferrals to the Plan under this Section 3.02(D).

(1) Definition of Catch-Up Eligible Participant. A Catch-Up Eligible Participant is a Participant who is eligible to make Elective Deferrals and who has attained at least age 50 or who will attain age 50 before the end of the Taxable Year in which he/she will make a Catch-Up Deferral. A Participant who dies or who incurs a Separation from Service before actually attaining age 50 in such Taxable Year is a Catch-Up Eligible Participant.

(2) Definition of Catch-Up Deferral. A Catch-Up Deferral is an Elective Deferral by a Catch-up Eligible Participant and which exceeds: (a) a Plan limit on Elective Deferrals under Section 3.02(A); (b) the Annual Additions Limit under Section 4.05(B); (c) the Elective Deferral Limit under Section 4.10(A); or (d) the ADP Limit under Section 4.10(B).

(3) Limit on Catch-Up Deferrals. A Participant's Catch-Up Deferrals for a Taxable Year may not exceed the lesser of: (a) 100% of the Participant's Compensation for the Taxable Year when added to the Participant's other Elective Deferrals; or (b) the Catch-Up Deferral dollar limit in effect for the Taxable Year as set forth below:

Year	Non-SIMPLE Plan	SIMPLE Plan
2002	\$1,000	\$500
2003	\$2,000	\$1,000
2004	\$3,000	\$1,500
2005	\$4,000	\$2,000
2006	\$5,000	\$2,500

(4) Adjustment after 2006. After the 2006 Taxable Year, the Secretary of the Treasury will adjust the Catch-Up Deferral dollar limit in multiples of \$500 under Code §414(v)(2)(C).

(5) Treatment of Catch-Up Deferrals. Catch-Up Deferrals are not: (a) subject to the Annual Additions Limit under Section 4.05(B); (b) subject to the Elective Deferral Limit under Section 4.10(A); (c) included in a Participant's ADR in calculating the Plan's ADP under Section 4.10(B); or (d) taken into account in determining the Highest Contribution Rate under Section 10.06(E). Catch-Up Deferrals are taken into account in determining the Plan's Top-Heavy Ratio under Section 10.06(K). Otherwise, Catch-Up Deferrals are treated as other Elective Deferrals.

(6) Universal availability. If the Employer permits Catch-Up Deferrals to its Plan, the right of all Catch-Up Eligible Participants to make Catch-Up Deferrals must

satisfy the universal availability requirement of Treas. Reg. §1.414(v)-1(e). If the Employer maintains more than one applicable plan within the meaning of Treas. Reg. §1.414(v)-1(g)(1), and any of the applicable plans permit Catch-Up Deferrals, then any Catch-up Eligible Participant in any such plans must be permitted to have the same effective opportunity to make the same dollar amount of Catch-Up Deferrals. Any Plan-imposed limit on total Elective Deferrals including Catch-Up Deferrals may not be less than 75% of a Participant's gross Compensation.

(E) Roth Deferrals. Effective for Taxable Years beginning in 2006, the Employer in its 401(k) Plan Adoption Agreement may elect to permit Roth Deferrals. The Employer must also elect to permit Pre-Tax Deferrals if the Employer elects to permit Roth Deferrals. The Plan Administrator will administer Roth Deferrals in accordance with this Section 3.02(E).

(1) Treatment of Roth Deferrals. The Plan Administrator will treat Roth Deferrals as Elective Deferrals for all purposes of the Plan, except where the Plan or Applicable Law indicate otherwise.

(2) Separate accounting. The Plan Administrator will establish a Roth Deferral Account for each Participant who makes any Roth Deferrals and Earnings thereon in accordance with Section 7.04(A)(1). The Plan Administrator will establish a Pre-Tax Account and Earnings thereon for each Participant who makes any Pre-Tax Deferrals in accordance with Section 7.04(A)(1). The Plan Administrator will credit only Roth Deferrals and Earnings thereon (allocated on a reasonable and consistent basis) to a Participant's Roth Deferral Account.

(3) No re-classification. An Elective Deferral contributed to the Plan either as a Pre-Tax Deferral or as a Roth Deferral may not be re-classified as the other type of Elective Deferral.

(F) Elective Deferrals as Employer Contributions. Where the context requires under the Plan, Elective Deferrals are Employer Contributions except: (1) under Section 3.04 relating to allocation of Employer Contributions; (2) under Section 3.06 relating to allocation conditions; (3) under Section 5.03 relating to vesting; and (4) where the Code prohibits the use of Elective Deferrals to satisfy qualified plan requirements.

3.03 MATCHING CONTRIBUTIONS. If the Employer elects in its Adoption Agreement to provide for Matching Contributions (or if Section 3.03(C)(2) applies), the Plan Administrator will apply the provisions of this Section 3.03.

(A) Matching Formula: Type, Rate/Amount, Limitations and Time Period. The Employer in its Adoption Agreement must elect the type(s) of Matching Contributions (Fixed or Discretionary Matching Contributions), and as applicable, the Matching Contribution rate(s)/amount(s), the limit(s) on Elective Deferrals or Employee Contributions subject to match, the limit(s) on the amount of Matching Contributions, and the time period the Plan Administrator will apply in the computation of any Matching Contributions. If the

Employer in its Adoption Agreement elects to apply any limit on Matching Contributions based on pay periods or on any other time period which is less than the Plan Year, the Plan Administrator will determine the limits in accordance with the time period specified and will not take into account any other Compensation or Elective Deferrals not within the applicable time period, even in the case of a Participant who becomes eligible for the match mid-Plan Year and regardless of the Employer's election as to Pre-Entry Compensation.

(1) Fixed Match. The Employer in its Adoption Agreement may elect to make a Fixed Matching Contribution to the Plan under one or more formulas.

(a) Allocation. The Employer may contribute on a Participant's behalf under a Fixed Matching Contribution formula only to the extent that the Participant makes Elective Deferrals or Employee Contributions which are subject to the formula and if the Participant satisfies the allocation conditions for Fixed Matching Contributions, if any, the Employer elects in its Adoption Agreement.

(2) Discretionary Match. The Employer in its Adoption Agreement may elect to make a Discretionary Matching Contribution to the Plan.

(a) Allocation. To the extent the Employer makes Discretionary Matching Contributions, the Plan Administrator will allocate the Discretionary Matching Contributions to the Account of each Participant entitled to the match under the Employer's discretionary matching allocation formula and who satisfies the allocation conditions for Discretionary Matching Contributions, if any, the Employer elects in its Adoption Agreement. The Employer under a Discretionary Matching Contribution retains discretion over the amount of its Matching Contributions, and, except as the Employer otherwise elects in its Adoption Agreement, the Employer also retains discretion over the matching formula. See Section 1.34(B).

(3) Roth Deferrals. Unless the Employer elects otherwise in its Adoption Agreement, the Employer's Matching Contributions apply in the same manner to Roth Deferrals as they apply to Pre-Tax Deferrals.

(4) Contribution timing. Except as described in Section 3.05 regarding a Safe Harbor 401(k) Plan, the time period that the Employer elects for computing its Matching Contributions does not require that the Employer actually contribute the Matching Contribution at any particular time. As to Matching Contribution timing and the ACP test, see Section 4.10(C)(5)(e)(iii).

(5) Participating Employers. If any Participating Employers contribute Matching Contributions to the Plan, the Employer in its Adoption Agreement must elect: (a) whether each Participating Employer will be subject to the same or different Matching Contribution formulas than the Signatory Employer; and (b) whether the Plan Administrator will allocate Matching Contributions only to Participants directly employed by the contributing Employer or to all Participants regardless of which Employer contributes or how much any Employer contributes. The allocation of Matching Contributions

under this Section 3.03(A)(5) also applies to the allocation of any forfeiture attributable to Matching Contributions and which the Plan allocates to Participants.

(B) Regular Matching Contributions. If the Employer in its Adoption Agreement elects to make Matching Contributions, such contributions are Regular Matching Contributions unless: (i) the Employer in its Adoption Agreement elects to treat some or all Matching Contributions as a Plan-Designated QMAC under Section 3.03(C)(1); or (ii) the Employer makes an Operational QMAC under Section 3.03(C)(2).

(1) Separate Account. The Plan Administrator will establish a separate Regular Matching Contribution Account for each Participant who receives an allocation of Regular Matching Contributions in accordance with Section 7.04(A)(1).

(C) QMAC. The provisions of this Section 3.03(C) apply to QMAC contributions.

(1) Plan-Designated QMAC. The Employer in its 401(k) Plan Adoption Agreement will elect whether or not to treat some or all Matching Contributions as a QMAC ("Plan-Designated QMAC"). If the Employer elects any Plan-Designated QMAC, the Employer in its Adoption Agreement will elect whether to allocate the QMAC to all Participants or only to NHCE Participants. The Plan Administrator will allocate a Plan-Designated QMAC only to those Participants who have satisfied eligibility conditions under Article II to receive Matching Contributions (or if applicable, to receive QMACs) and who have satisfied any allocation conditions under Section 3.06 the Employer has elected in the Adoption Agreement as applicable to QMACs.

(2) Operational QMAC. The Employer, to facilitate the Plan Administrator's correction of test failures under Section 4.10, (or to lessen the degree of such failures), but only if the Plan is using Current Year Testing, also may make Discretionary Matching Contributions as QMACs to the Plan ("Operational QMAC"), irrespective of whether the Employer in its Adoption Agreement has elected to provide for any Matching Contributions or Plan-Designated QMACs. The Plan Administrator, in its discretion, will allocate the Operational QMAC, but will limit the allocation of any Operational QMAC only to some or all NHCEs who are ADP Participants or ACP Participants under Sections 4.11(A) and (B). The Plan Administrator may allocate an Operational QMAC to any such NHCE Participants who are eligible to make (and who actually make) Elective Deferrals or Employee Contributions even if such Participants have not satisfied any eligibility conditions under Article II applicable to Matching Contributions (including QMACs) or have not satisfied any allocation conditions under Section 3.06 applicable to Matching Contributions (or to QMACs). Where the Plan Administrator disaggregates the Plan for coverage and for nondiscrimination testing under the "otherwise excludible employees" rule described in Section 4.06(C), the Plan Administrator also may limit the QMAC allocation to those NHCEs in any disaggregated plan which actually is subject to ADP and ACP testing (because there are HCEs in that disaggregated plan).

(3) Separate Account. The Plan Administrator will establish a separate QMAC Account for each Participant who receives an allocation of QMACs in accordance with Section 7.04(A)(1).

(D) Matching Catch-Up Deferrals. The Employer in its 401(k) Plan Adoption Agreement must elect whether or not to match any Catch-Up Deferrals if the Plan permits Catch-Up Deferrals. The Employer's election to match Catch-Up Deferrals will apply to all Matching Contributions or will specify the Fixed Matching Contributions or Discretionary Matching Contributions which apply to the Catch-Up Deferrals. Regardless of the Employer's Adoption Agreement election, in a Safe Harbor 401(k) Plan, the Plan will apply the Basic Matching Contribution or Enhanced Matching Contribution to Catch-Up Deferrals and if the Plan will satisfy the ACP test safe harbor under Section 3.05(G), the Employer will apply any Additional Matching Contribution to Catch-Up Deferrals.

(E) Targeting Limitations. Matching Contributions, for nondiscrimination testing purposes, are subject to the targeting limitations in Section 4.10(D). The Employer will not make an Operational QMAC in an amount which exceeds the targeting limitations.

3.04 NONELECTIVE/EMPLOYER CONTRIBUTIONS. If the Employer elects to provide for Nonelective Contributions to a Profit Sharing Plan or 401(k) Plan (or if Section 3.04(C)(2) applies), or the Plan is a Money Purchase Pension Plan or a Target Benefit Plan, the Plan Administrator will apply the provisions of this Section 3.04.

(A) Amount and Type. The Employer in its Adoption Agreement must elect the type and amount of Nonelective Contributions or other Employer Contributions.

(1) Discretionary Nonelective Contribution. The Employer in its Adoption Agreement may elect to make Discretionary Nonelective Contributions.

(2) Fixed Nonelective or other Employer Contributions. The Employer in its Adoption Agreement may elect to make Fixed Nonelective Contributions or Money Purchase Pension Plan or Target Benefit Plan Contributions. The Employer must specify the time period to which any fixed contribution formula will apply (which is deemed to be the Plan Year if the Employer does not so specify) and must elect the allocation method which may be the same as the contribution formula or may be a different allocation method under Section 3.04(B).

(3) Prevailing Wage Contribution. The Employer in its Nonstandardized Plan or Volume Submitter Plan may elect to make fixed Employer Contributions pursuant to a Prevailing Wage Contract. In such event, the Employer's Prevailing Wage Contributions will be made in accordance with the Prevailing Wage Contract, based on hourly rate, employment category, employment classification and such other factors as such contract specifies. The Employer in its Adoption Agreement must elect whether to offset the Employer Contributions (which are not Prevailing Wage Contributions) to this Plan or to another Employer plan, by

the amount of the Participant's Prevailing Wage Contributions. To offset any Employer Contribution, the Prevailing Wage Contribution must comply with any distribution restriction under Section 6.01(C)(4) otherwise applicable to the Employer Contribution being offset and the Plan Administrator must account for the Prevailing Wage Contribution accordingly. See Section 5.03(E) regarding vesting of Prevailing Wage Contributions.

(4) Participating Employers. If any Participating Employers contribute Nonelective Contributions or other Employer Contributions to the Plan, the Employer in its Adoption Agreement must elect: (a) whether each Participating Employer will be subject to the same or different Nonelective/Employer Contribution formulas under Section 3.04(A) and allocation methods under Section 3.04(B) than the Signatory Employer; and (b) whether, under Section 3.04(B), the Plan Administrator will allocate Nonelective/Employer Contributions only to Participants directly employed by the contributing Employer or to all Participants regardless of which Employer contributes or how much any Employer contributes. The allocation of Nonelective/Employer Contributions under this Section 3.04(A)(4) also applies to the allocation of any forfeiture attributable to Nonelective/Employer Contributions and which the Plan allocates to Participants.

(B) Method of Allocation. The Employer in its Adoption Agreement must specify the method of allocating Nonelective Contributions or other Employer Contributions to the Trust. The Plan Administrator will apply this Section 3.04(B) by including in the allocation only those Participants who have satisfied the Plan's allocation conditions under Section 3.06, if any, applicable to the contribution. The Plan Administrator, in allocating a contribution under any allocation formula which is based in whole or in part on Compensation, will take into account Compensation under Section 1.11 as the Employer elects in its Adoption Agreement and only will take into account the Compensation of the Participants entitled to an allocation. In addition, if the Employer has elected in its Adoption Agreement to define allocation Compensation over a time period which is less than a full Plan Year, the Plan Administrator will apply the allocation methods in this Section 3.04(B) based on Participant Compensation within the relevant time period.

(1) Pro rata allocation formula. The Employer in its Adoption Agreement may elect a pro rata allocation formula. Under a pro rata allocation formula, the Plan Administrator will allocate the Employer Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year.

(2) Permitted disparity allocation formula. The Employer in its Adoption Agreement may elect a two-tiered or a four-tiered permitted disparity formula, providing allocations described in (a) or (b) below, respectively.

(a) Two-tiered.

(i) Tier one. Under the first tier, the Plan Administrator will allocate the Employer Contributions for a Plan Year in the same ratio that each Participant's Compensation plus Excess Compensation (as the Employer defines that term in its Adoption Agreement) for the Plan Year bears to the total Compensation plus Excess Compensation of all Participants for the Plan Year. The allocation under this first tier, as a percentage of each Participant's Compensation plus Excess Compensation, must not exceed the applicable percentage (5.7%, 5.4%, or 4.3%) listed under Section 3.04(B)(2)(c).

(ii) Tier two. Under the second tier, the Plan Administrator will allocate any remaining Employer Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year.

(b) Four-tiered.

(i) Tier one. Under the first tier, the Plan Administrator will allocate the Employer Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year, but not exceeding 3% of each Participant's Compensation. Solely for purposes of this first tier allocation, a "Participant" means, in addition to any Participant who satisfies the allocation conditions of Section 3.06 for the Plan Year, any other Participant entitled to a Top-Heavy Minimum Allocation.

(ii) Tier two. Under the second tier, the Plan Administrator will allocate the Employer Contributions for a Plan Year in the same ratio that each Participant's Excess Compensation (as the Employer defines that term in its Adoption Agreement) for the Plan Year bears to the total Excess Compensation of all Participants for the Plan Year, but not exceeding 3% of each Participant's Excess Compensation.

(iii) Tier three. Under the third tier, the Plan Administrator will allocate the Employer Contributions for a Plan Year in the same ratio that each Participant's Compensation plus Excess Compensation for the Plan Year bears to the total Compensation plus Excess Compensation of all Participants for the Plan Year. The allocation under this third tier, as a percentage of each Participant's Compensation plus Excess Compensation, must not exceed the applicable percentage (2.7%, 2.4%, or 1.3%) listed under Section 3.04(B)(2)(c).

(iv) Tier four. Under the fourth tier, the Plan Administrator will allocate any remaining Employer Contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year.

(c) Maximum disparity table. For purposes of the permitted disparity allocation formulas under this Section 3.04(B)(2), the applicable percentage is:

Integration level % of taxable wage base	Applicable %	Applicable %
	for 2-tiered formula	for 4-tiered formula
100%	5.7%	2.7%
More than 80% but less than 100%	5.4%	2.4%
More than 20% (but not less than \$10,001) and not more than 80%	4.3%	1.3%
20% (or \$10,000, if greater) or less	5.7%	2.7%

(d) Overall permitted disparity limits.

(i) Annual overall permitted disparity limit. Notwithstanding Sections 3.04(B)(2)(a) and (b), for any Plan Year the Plan benefits any Participant who benefits under another qualified plan or under a simplified employee pension plan (as defined in Code §408(k)) maintained by the Employer that provides for permitted disparity (or imputes disparity), the Plan Administrator will allocate Employer Contributions to the Account of each Participant in the same ratio that each Participant's Compensation bears to the total Compensation of all Participants for the Plan Year.

(ii) Cumulative permitted disparity limit. Effective for Plan Years beginning after December 31, 1994, the cumulative permitted disparity limit for a Participant is 35 total cumulative permitted disparity years. "Total cumulative permitted disparity years" means the number of years credited to the Participant for allocation or accrual purposes under the Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant's cumulative permitted disparity limit, the Plan Administrator will treat all years ending in the same calendar year as the same year. If the Participant has not benefited under a Defined Benefit Plan or under a Target Benefit Plan of the Employer for any year beginning after December 31, 1993, the Participant does not have a cumulative permitted disparity limit.

For purposes of this Section 3.04(B)(2)(d), a Participant "benefits" under a plan for any Plan Year during which the Participant receives, or is deemed to receive, a contribution allocation in accordance with Treas. Reg. §1.410(b)-3(a).

(e) Pro-ration of integration level. In the event that the Plan Year is less than 12 months and the Plan Administrator will allocate the Employer Contribution based on Compensation for the short Plan Year, the Plan Administrator will pro rate the integration level based on the number of months in the short Plan Year. The Plan Administrator will not pro rate the integration level in the case of: (i) a Participant who participates in the Plan for less than the entire 12 month Plan Year and whose allocation is based on Participating Compensation; (ii) a new Plan established mid-Plan Year, but with an Effective

Date which is as of the beginning of the Plan Year; or (iii) a terminating Plan which bases allocations on Compensation through the effective date of the termination, but where the Plan Year continues for the balance of the full 12 month Plan Year.

(3) Classifications allocation formula. The Employer in its Nonstandardized Plan or Volume Submitter Plan may elect to specify classifications of Participants to whom the Plan Administrator will allocate any Employer Contribution.

(a) Volume Submitter. The Employer in its Volume Submitter Plan may elect to specify any number of classifications and a classification may consist of any number of Participants. The Employer also may elect to put each Participant in his/her own classification. The Plan Administrator will apportion the Employer Contribution for a Plan Year to the classifications as the Employer designates at the time that the Employer makes the contribution. If there is more than one Participant in a classification, the Plan Administrator will allocate the Employer Contribution for the Plan Year within each classification as the Employer elects in its Adoption Agreement which may be: (i) in the same ratio that each Participant's Compensation for the Plan Year bears to the total Plan Year Compensation for all Participants within the same classification (pro rata); or (ii) the same dollar amount to each Participant within a classification. If a Participant during a Plan Year shifts from one classification to another, the Plan Administrator will apportion the Participant's allocation during that Plan Year pro rata based on the Participant's Compensation while a member of each classification, unless the Employer in Appendix B: (i) specifies apportionment based on the number of months or days a Participant spends in a classification; or (ii) elects that the Employer in a nondiscriminatory manner will direct the Plan Administrator as to which classification the Participant will participate in during that entire Plan Year.

(b) Nonstandardized Plan . The Employer in its Nonstandardized Plan may elect to specify any number of classifications and a classification may consist of any number of Participants. The Employer also may elect to put each Participant in his/her own classification. Notwithstanding the foregoing , each NHCE classification must be reasonable as described in Treas. Reg. §1.410(b)-4(b) and the maximum number of HCE and NHCE allocation rates is restricted as described below. The Plan Administrator will apportion the Employer Contribution for a Plan Year to the classifications as the Employer designates at the time that the Employer makes the contribution. If there is more than one Participant in a classification, the Plan Administrator will allocate the Employer Contribution for the Plan Year within each classification in the same ratio that each Participant's Compensation for the Plan Year bears to the total Plan Year Compensation for all Participants within the same classification (pro rata). The maximum number of allocation rates that the Plan may have during a Plan Year: (i) in the case of HCEs, is the number of eligible HCEs with a limit of 25 allocation rates; and (ii) in the case of the NHCEs, is as follows:

Number of eligible NHCEs	Allocation rates
2 or less	1
3-8	2
9-11	3
12-19	4
20-29	5
30 or more	see below

If there are 30 or more eligible NHCEs, the maximum number of allocation rates is equal to the number of eligible NHCEs, divided by the number 5 (rounded to the next lowest whole number if the result is not a whole number), with a maximum of 25 allocation rates. For this purpose, an "allocation rate" is the Participant's allocation under this Section 3.04(B)(3)(b), divided by Compensation for nondiscrimination testing under Section 1.11(F). If, in any Plan Year, the number of classifications the Employer has elected in the Adoption Agreement exceeds the maximum number of allocation rates, the Employer will direct the Plan Administrator to allocate the Employer Contribution in a manner that results in more than one classification receiving the same allocation rate, and as is sufficient to bring the number of allocation rates within limits. If a Participant during a Plan Year shifts from one classification to another, the Employer in a nondiscriminatory manner will direct the Plan Administrator as to which classification the Participant will participate in during that entire Plan Year; a Participant may not participate in more than one classification during a Plan Year. The limitations of this Section 3.04(B)(3)(b) apply if the Employer's adoption of this Plan is a new Plan and in the case of a Restated Plan, these limitations apply for Plan Years which begin after the date the Employer executes the Restated Plan. For Plan Years up to and including the Plan year in which the Employer adopts the Plan as a Restated Plan, the Employer will apply the Plan terms as in effect under the prior Plan.

(4) Super-integrated allocation formula. The Employer in its Volume Submitter Plan may elect a super-integrated allocation formula. The Plan Administrator will allocate the Employer Contribution for the Plan Year in accordance with the tiers of priority that the Employer elects in its Adoption Agreement. The Plan Administrator will not allocate to the tier with the next lower priority until the Employer has contributed an amount sufficient to maximize the allocation under the immediately preceding tier.

(5) Age-based allocation formula. The Employer in its Nonstandardized Plan or Volume Submitter Plan may elect an age-based allocation formula. The Plan Administrator will allocate the Employer Contribution for the Plan Year in the same ratio that each Participant's Benefit Factor for the Plan Year bears to the sum of the Benefit Factors of all Participants for the Plan Year.

(a) Definition of Benefit Factor. A Participant's Benefit Factor is his/her Compensation for the Plan Year multiplied by the Participant's Actuarial Factor.

(b) Definition of Actuarial Factor. A Participant's Actuarial Factor is the factor that the Plan Administrator establishes based on the interest rate and mortality table the Employer elects in its Adoption

Agreement. If the Employer elects to use the UP-1984 table, a Participant's Actuarial Factor is the factor in Table I of Appendix D to the Adoption Agreement or is the product of the factors in Tables I and II of Appendix D to the Adoption Agreement if the Plan's Normal Retirement Age is not age 65. If the Employer in its Adoption Agreement elects to use a table other than the UP-1984 table, the Plan Administrator will determine a Participant's Actuarial Factor in accordance with the designated table (which the Employer will attach to the Adoption Agreement as a substituted Appendix D) and the Adoption Agreement elected interest rate.

(6) Uniform points allocation formula. The Employer in its Nonstandardized Plan or Volume Submitter Plan may elect a uniform points allocation formula. The Plan Administrator will allocate any Employer Contribution for a Plan Year in the same ratio that each Participant's points bear to the total points of all Participants for the Plan Year. The Plan Administrator determines a Participant's points in accordance with the Employer's Adoption Agreement elections under which the Employer will elect to define points based on Years of Service, Compensation and/or age.

(7) Incorporation of fixed or Prevailing Wage Contribution formula. The Employer in its Adoption Agreement may elect to allocate Employer Contributions in accordance with the Plan's fixed Employer Contribution formula. In such event, the Plan Administrator will allocate the Employer Contributions for a Plan Year in accordance with the Fixed Nonelective or other Employer Contribution formula or in accordance with the Prevailing Wage Contribution formula the Employer has elected under Sections 3.04(A)(2) or (3).

(8) Target Benefit/Money Purchase allocation formula. The Plan Administrator will allocate the Employer Contributions for a Plan Year to its Money Purchase Pension Plan or to its Target Benefit Plan as provided in the Employer's Adoption Agreement.

(C) QNEC. The provisions of this Section 3.04(C) apply to QNEC contributions.

(1) Plan-Designated QNEC. The Employer in its 401(k) Plan Adoption Agreement will elect whether or not to treat some or all Nonelective Contributions as a QNEC ("Plan-Designated QNEC"). If the Employer elects any Plan-Designated QNECs, the Employer in its Adoption Agreement will elect whether to allocate a Plan-Designated QNEC to all Participants or only to NHCE Participants and the Employer in its Adoption Agreement also must elect a QNEC allocation method as follows: (a) pro rata in relation to Compensation; (b) in the same dollar amount without regard to Compensation (flat dollar); (c) under the reverse allocation method; or (d) under any other method subject to the testing limitations of Section 3.04(C)(5). The Plan Administrator will allocate a QNEC under this Section 3.04(C)(1) only to those Participants who have satisfied eligibility conditions under Article II to receive Nonelective Contributions (or if applicable, to QNECs) and who have satisfied any allocation conditions under Section 3.06 the Employer has elected in the Adoption Agreement as applicable to QNECs.

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(2) Operational QNEC. The Employer, to facilitate the Plan Administrator's correction of test failures under Section 4.10, (or to lessen the degree of such failures), but only if the Plan is using Current Year Testing, also may make Discretionary Nonelective Contributions as QNECs to the Plan ("Operational QNEC"), irrespective of whether the Employer in its Adoption Agreement has elected to provide for any Nonelective Contributions or Plan-Designated QNECs. The Plan Administrator, in its discretion, will allocate the Operational QNEC, but will limit the allocation of any Operational QNEC only to some or all NHCE Participants who are ADP Participants or ACP Participants under Sections 4.11(A) and (B). The Plan Administrator operationally must elect whether to allocate an Operational QNEC to NHCE ADP Participants: (a) pro rata in relation to Compensation; (b) in the same dollar amount without regard to Compensation (flat dollar); (c) under the reverse allocation method; or (d) under any other method; provided, that any QNEC allocation is subject to the limitations of Section 3.04(C)(5). The Plan Administrator may allocate an Operational QNEC to any NHCE ADP or ACP Participants even if such Participants have not satisfied any eligibility conditions under Article II applicable to Nonelective Contributions (including QNECs) or have not satisfied any allocation conditions under Section 3.06 applicable to Nonelective Contributions (or to QNECs). Where the Plan Administrator disaggregates the Plan for coverage and for nondiscrimination testing under the "otherwise excludable employees" rule described in Section 4.06(C), the Plan Administrator also may limit the QNEC allocation to those NHCEs in any disaggregated "plan" which actually is subject to ADP and ACP testing (because there are HCEs in that disaggregated plan). The Employer may designate all or any part of its Prevailing Wage Contribution as a QNEC, provided that the Prevailing Wage Contribution qualifies as a QNEC and that QNEC treatment is not inconsistent with the Prevailing Wage Contract.

(3) Reverse QNEC allocation. Under the reverse QNEC allocation method, the Plan Administrator (subject to Section 3.06 if applicable), will allocate a QNEC first to the NHCE Participant(s) with the lowest Compensation for the Plan Year in an amount not exceeding the Annual Additions Limit for each Participant, with any remaining amounts allocated to the next highest paid NHCE Participant(s) not exceeding his/her Annual Additions Limit and continuing in this manner until the Plan Administrator has fully allocated the QNEC.

(4) Separate Account. The Plan Administrator will establish a separate QNEC Account for each Participant who receives an allocation of QNECs in accordance with Section 7.04(A)(1).

(5) Anti-conditioning and targeting. The Employer in its Adoption Agreement and the Plan Administrator in operation may not condition the allocation of any QNEC under this Section 3.04(C), on whether a Participant has made Elective Deferrals. The nondiscrimination testing of QNECs also is subject to the targeting limitations of Section 4.10(D). The Employer will not make an Operational QNEC in an amount which exceeds the targeting limitations.

(6) Standardized Plan limitation. The Employer in its Standardized Plan may not elect a reverse QNEC allocation method or any similar QNEC allocation method even if such allocation would comply with Section 3.04(C)(5).

(D) Qualified Replacement Plan. The Employer may establish or maintain this Plan as a qualified replacement plan as described in Code §4980 under which the Plan may receive a Transfer from a terminating qualified plan the Employer also maintains. The Plan Administrator will credit the transferred amounts to a suspense account under the Plan and thereafter the Plan Administrator will allocate the transferred amounts under this Section 3.04(D) in the same manner as the Plan Administrator allocates Employer Nonelective Contributions.

3.05 SAFE HARBOR 401(k) CONTRIBUTIONS. The Employer in its 401(k) Plan Adoption Agreement may elect to apply to its Plan the safe harbor provisions of this Section 3.05.

(A) Prior Election and Notice/12 Month Plan Year. Except as otherwise provided in this Plan or in accordance with Applicable Law, an Employer: (i) prior to beginning of the Plan Year to which the safe harbor provisions apply, must elect the safe harbor plan provisions of this Section 3.05; (ii) prior to the beginning of the Plan Year to which the safe harbor provisions apply, must satisfy the applicable notice requirements; and (iii) must apply the safe harbor provisions for the entire 12 month safe harbor Plan Year.

(1) Short Plan Year. An Employer's Plan may be a Safe Harbor 401(k) Plan in a short Plan Year: (a) as provided in Sections 3.05(I)(3) or (4), relating to the initial safe harbor Plan Year; (b) after the Final 401(k) Regulations Effective Date if the Employer creates a short Plan Year by changing its Plan Year, provided that the Employer maintains the Plan as a Safe Harbor 401(k) Plan in the Plan Years both before and after the short Plan Year as described in Treas. Reg. §1.401(k)-3(e)(3); or (c) after the Final 401(k) Regulations Effective Date if the short Plan Year is the result of the Employer's termination of the Plan under Section 3.05(I)(5).

(B) Effect/Remaining Terms/Testing Status. The provisions of this Section 3.05 apply to an electing Employer notwithstanding any contrary provision of the Plan and all other remaining Plan terms continue to apply to the Employer's Safe Harbor 401(k) Plan. An Employer which elects and operationally satisfies the safe harbor provisions of this Section 3.05 is not subject to the nondiscrimination provisions of Section 4.10(B) (ADP test). An electing Employer which provides for an Enhanced Matching Contribution under Section 3.05(E)(5) or for Additional Matching Contributions under Section 3.05(F) is subject to the nondiscrimination provisions of Section 4.10(C) (ACP test), unless the Employer elects in its Adoption Agreement to apply the ACP test safe harbor described in Section 3.05(G). If the Plan is a Safe Harbor 401(k) Plan, for purposes of testing in future (non-safe harbor) Plan Years, the Plan in the safe harbor Plan Year is deemed to be using Current Year Testing as to the ADP test and is deemed to be using Current Year Testing for the

ACP test if the Plan in the safe harbor Plan Year satisfies the ACP test safe harbor. If a Safe Harbor 401(k) Plan is subject to Sections 3.05(I)(1) or (2), the Plan in such Plan Year is deemed to be using Current Year Testing for both the ADP and ACP tests.

(C) Compensation for Allocation. In allocating Safe Harbor Contributions and Additional Matching Contributions that satisfy the ACP test safe harbor under Section 3.05(G) and for Elective Deferral allocation under this Section 3.05, the following provisions apply:

(1) Safe Harbor and Additional Matching allocation. For purposes of allocating the Employer's Safe Harbor Contributions and ACP test safe harbor Additional Matching Contributions, if any, Compensation is limited as described in Section 1.11(E) and Employer must elect under its Adoption Agreement a nondiscriminatory definition of Compensation as described in Section 1.11(F). The Employer in its Adoption Agreement may not elect to limit NHCE Compensation to a specified dollar amount, except as required under Section 1.11(E).

(2) Deferral allocation. An Employer in its Adoption Agreement may elect to limit the type of Compensation from which a Participant may make an Elective Deferral to any reasonable definition. The Employer in its Adoption Agreement also may elect to limit the amount of a Participant's Elective Deferrals to a whole percentage of Compensation or to a whole dollar amount, provided each Eligible NHCE Participant may make Elective Deferrals in an amount sufficient to receive the maximum Matching Contribution, if any, available under the Plan and may defer any lesser amount. However, a Participant may not make Elective Deferrals in the event that the Participant is suspended from doing so under Section 6.07(A)(2), relating to hardship distributions or to the extent that the allocation would exceed a Participant's Annual Additions Limit in Section 4.05(B) or the maximum Deferral Limit in Section 4.10(A). If the Plan permits Roth Deferrals in addition to Pre-Tax Deferrals, Elective Deferrals for purposes of Section 3.05 includes both Roth Deferrals and Pre-Tax Deferrals.

(D) "Early" Elective Deferrals/Delay of Safe Harbor Contribution. If the Employer in its Adoption Agreement elects any age and service eligibility requirements for Elective Deferrals that are less than age 21 and one Year of Service (with one Year of Service being defined as completion of 1,000 Hours of Service during the relevant Eligibility Computation Period), the Employer in its Adoption Agreement may elect to limit Safe Harbor Contributions to the Participants who have attained age 21 and who have satisfied the foregoing one Year of Service requirement. The Plan Administrator under this Adoption Agreement election will apply the OEE rule under Section 4.06(C) and will perform the ADP (and ACP) tests as necessary for the Participants who are in the disaggregated plan which benefits the Otherwise Excludible Employees. The disaggregated plan which benefits the Includible Employees is a Safe Harbor 401(k) Plan under this Section 3.05. However, nothing in this Section 3.05(D) affects the obligation of the Employer under Article X in the event that the Plan is top-heavy, to provide a Top-Heavy Minimum Allocation for Non-Key Employee Participants in the

Elective Deferral component of the Plan who have not satisfied the age and service requirements applicable to the Safe Harbor Contributions. Under this Section 3.05(D), eligibility for Additional Matching Contributions and for Nonelective Contributions which are not Safe Harbor Nonelective Contributions is controlled by the Employer's Adoption Agreement elections and is not necessarily limited to age 21 and one Year of Service as is the case for Safe Harbor Contributions. However, as to ACP test safe harbor treatment for Additional Matching Contributions, see Section 3.05(F)(3).

(E) Safe Harbor Contributions/ADP Test Safe Harbor. An Employer which elects under this Section 3.05(E) to apply the safe harbor provisions, must satisfy the ADP test safe harbor contribution requirement under Code §401(k)(12) by making a Safe Harbor Contribution to the Plan. Except as otherwise provided in this Section 3.05, the Employer must make its Safe Harbor Contributions (and any Additional Matching Contributions which will satisfy the ACP test safe harbor), no later than twelve months after the end of the Plan Year to which such contributions are allocated. If the Employer satisfies this Section 3.05(E) and the remaining applicable provisions of Section 3.05, Elective Deferrals are not subject to nondiscrimination testing under Section 4.10(B) (ADP test). The Employer in its Adoption Agreement may elect to apply forfeitures toward satisfaction of the Employer's required Safe Harbor Contribution.

(1) Definition of Safe Harbor Contribution. A Safe Harbor Contribution is a Safe Harbor Nonelective Contribution or a Safe Harbor Matching Contribution as the Employer elects in its Adoption Agreement.

(2) Definition of Safe Harbor Nonelective Contribution. A Safe Harbor Nonelective Contribution is a Fixed Nonelective Contribution in an amount the Employer elects in its Adoption Agreement, which must equal at least 3% of each Participant's Compensation unless the Employer elects to limit Safe Harbor Nonelective Contributions to NHCEs under Section 3.05(E)(8) or unless Section 3.05(D) applies. A Safe Harbor Nonelective Contribution is a QNEC.

(3) Definition of Safe Harbor Matching Contribution. A Safe Harbor Matching Contribution is a Basic Matching Contribution or an Enhanced Matching Contribution. Under a Safe Harbor Matching Contribution an HCE may not receive a greater rate of match at any level of Elective Deferrals than any NHCE. A Safe Harbor Matching Contribution is a QMAC.

(4) Definition of Basic Matching Contribution. A Basic Matching Contribution is a Fixed Matching Contribution equal to 100% of a Participant's Elective Deferrals which do not exceed 3% of Compensation, plus 50% of Elective Deferrals which exceed 3%, but do not exceed 5% of Compensation.

(5) Definition of Enhanced Matching Contribution. An Enhanced Matching Contribution is a Fixed Matching Contribution made in accordance with any formula the Employer elects in its Adoption Agreement under which: (a) at any rate of Elective Deferrals, a

Participant receives a Matching Contribution which is at least equal to the match the Participant would receive under the Basic Matching Contribution formula; and (b) the rate of match does not increase as the rate of Elective Deferrals increases.

(6) Time period for computing/contributing Safe Harbor Matching Contribution.

(a) Computation. The Employer in its Adoption Agreement must elect the applicable time period for computing the Employer's Safe Harbor Matching Contributions. If the Employer fails to so elect, the Employer is deemed to have elected to compute its Safe Harbor Matching Contribution based on the Plan Year.

(b) Contribution deadline. If the Employer elects to compute its Safe Harbor Matching Contribution based on a time period which is less than the Plan Year, the Employer must contribute the Safe Harbor Matching Contributions to the Plan no later than the end of the Plan Year quarter which follows the quarter in which the Elective Deferral that gave rise to the Safe Harbor Matching Contribution was made. If the Employer fails to contribute by the foregoing deadline, the Employer will correct the operational failure by contributing the Safe Harbor Matching Contribution as soon as is possible and will also contribute Earnings on the Contribution. See Section 7.08. If the time period for computing the Safe Harbor Matching Contribution is the Plan Year, the Employer must contribute the Safe Harbor Matching Contribution to the Plan no later than twelve months after the end of the Plan Year to which the Safe Harbor Contribution is allocated.

(7) No allocation conditions. The Plan Administrator must allocate the Employer's Safe Harbor Contribution without regard to the Section 3.06 allocation conditions, if any, the Employer has elected as to non-Safe Harbor Contributions.

(8) NHCEs must receive allocation; further election of allocation group. Subject to Section 3.05(D), the Plan Administrator must allocate the Safe Harbor Contribution to NHCE Participants, which for purposes of Section 3.05 means NHCEs who are eligible to make Elective Deferrals. The Employer in its Adoption Agreement, must elect whether to allocate Safe Harbor Contributions: (a) to all Participants; (b) only to NHCE Participants; or (c) to NHCE Participants and to designated HCE Participants.

(9) 100% vesting/distribution restrictions. A Participant's Account Balance attributable to Safe Harbor Contributions at all times is 100% Vested and is subject to the distribution restrictions described in Section 6.01 (C)(4)(b).

(10) Possible application of ACP test. If the Plan's sole Matching Contribution is a Basic Matching Contribution, the Basic Matching Contribution is not subject to nondiscrimination testing under Section 4.10(C) (ACP test). The Employer in its Adoption Agreement must elect whether to satisfy the ACP test safe harbor amount limitation under Section 3.05(G) with respect to the

Employer's Enhanced Matching Contributions or to test its Enhanced Matching Contributions under Section 4.10(C) (ACP test). As of the Final 401(k) Regulations Effective Date, the Employer in its Adoption Agreement may elect to test Enhanced Matching Contributions using Current Year Testing or Prior Year Testing. Prior to the Final 401(k) Regulations Effective Date, the Employer was limited to Current Year Testing under Notice 98-52.

(11) Application to other allocations/testing. Except as the Employer otherwise elects in Appendix B and as described below as to permitted disparity, any Safe Harbor Nonelective Contributions will be applied toward (offset) any other allocation to a Participant of a non-Safe Harbor Nonelective Contribution. An Employer electing to apply the general nondiscrimination test under Section 4.06(C), may include Safe Harbor Nonelective Contributions in applying the general test. An Employer which has elected in its Adoption Agreement to apply permitted disparity in allocating the Employer's Nonelective Contributions made in addition to Safe Harbor Nonelective Contributions may not include within the permitted disparity formula allocation any of the Employer's Safe Harbor Nonelective Contributions.

(12) Contribution to another plan. An Employer in its Adoption Agreement may elect to make the Safe Harbor Contribution to another Defined Contribution Plan the Employer maintains provided: (a) this Plan and the other plan have the same Plan Years; (b) each Participant eligible for Safe Harbor Contributions under this Plan is eligible to participate in the other plan; and (c) the other plan provides that 100% vesting and the distribution restrictions under Section 6.01(C)(4)(b) apply to the Safe Harbor Contribution Account maintained within the other plan. An Employer cannot apply any Safe Harbor Contributions to satisfy the 401(k) safe harbor requirements in more than one plan.

(F) Additional Matching Contributions. The Employer in its Adoption Agreement may elect to make Additional Matching Contributions to its safe harbor Plan under this Section 3.05(F).

(1) Definition of Additional Matching Contributions. Additional Matching Contributions are Fixed or Discretionary Matching Contributions ("Fixed Additional Matching Contributions" or "Discretionary Additional Matching Contributions") the Employer makes to its Safe Harbor 401(k) Plan (including a Safe Harbor 401(k) Plan the Employer elected into during the Plan Year under Section 3.05(I)(1)) and are not Safe Harbor Matching Contributions. Additional Matching Contributions are in addition to whatever type of Safe Harbor Contributions the Employer makes to satisfy the ADP test safe harbor under Section 3.05(E). If the Employer under Section 3.05(I)(1) does not elect into the safe harbor as of a Plan Year, any Matching Contributions for that Plan Year are not Additional Matching Contributions and as such cannot qualify for the ACP test safe harbor.

(2) Safe harbor or testing. The Employer in its Adoption Agreement must elect whether to subject the Additional Matching Contributions to the ACP test safe harbor requirements of Section 3.05(G), or for the Plan

Administrator to test the Additional Matching Contributions (and any Safe Harbor Matching Contribution) for nondiscrimination under Section 4.10(C) (ACP test). If the Employer under section 3.05(I)(1) elects during the Plan Year to become a Safe Harbor 401(k) Plan, any Additional Matching which satisfies the ACP test safe harbor requirements is not subject to the ACP test. As of the Final 401(k) Regulations Effective Date, the Employer in its Adoption Agreement may elect to test Additional Matching Contributions (and any Safe Harbor Matching Contribution) using Current Year Testing or Prior Year Testing. Prior to such Final 401(k) Regulations Effective Date, the Employer was limited to Current Year Testing under Notice 98-52.

(3) Eligibility, vesting, allocation conditions and distributions. The Employer must elect in its Adoption Agreement the eligibility conditions, vesting schedule, allocation conditions and distribution provisions applicable to the Employer's Additional Matching Contributions. To satisfy the ACP safe harbor under Section 3.05(G), effective as of the Final 401(k) Regulations Effective Date, any allocation conditions the Employer otherwise elects in its Adoption Agreement do not apply to Additional Matching Contributions. However, regardless of whether the Employer elects to treat the Additional Matching Contributions as being subject to the ACP test safe harbor, the Employer may elect: (a) to apply a vesting schedule to the Additional Matching Contributions; and (b) to treat the Additional Matching Contributions Account as not subject to the distribution restrictions under Section 6.01(C)(4)(b). If the Employer wishes to apply the ACP test safe harbor to Additional Matching Contributions, the Employer must not elect eligibility conditions applicable to the Additional Matching Contribution which exceed age 21 and one Year of Service and the Employer must elect eligibility conditions which are the same as it elects for the Safe Harbor Contribution.

(4) Time period for computing/contributing Additional Matching Contributions.

(a) Computation. The Employer in its Adoption Agreement must elect the applicable time period for computing the Employer's Additional Matching Contributions. If the Employer fails to so elect, the Employer is deemed to have elected to compute its Additional Matching Contribution based on the Plan Year.

(b) Contribution deadline. This Section 3.05(F)(4)(b) applies if the Employer in its Adoption Agreement elects to apply the ACP test safe harbor under Section 3.05(G) to its Additional Matching Contributions. If the Employer elects to compute its Additional Matching Contribution based on a time period which is less than the Plan Year, the Employer must contribute the Additional Matching Contributions to the Plan no later than the end of the Plan Year quarter which follows the quarter in which the Elective Deferral that gave rise to the Additional Matching Contribution was made. If the Employer fails to contribute by the foregoing deadline, the Employer will correct the operational failure by contributing the Additional Matching Contribution as soon as is possible and will also contribute Earnings on the Contribution. See Section 7.08. If the Employer elects to apply the ACP test

safe harbor and elects the Plan Year as the time period for computing the Additional Matching Contribution, the Employer must contribute the Additional Matching Contribution to the Plan no later than twelve months after the end of the Plan Year to which the Additional Matching Contribution is allocated.

(G) ACP test safe harbor. The Employer in its Adoption Agreement will elect whether (i) to apply the amount limitations under this Section 3.05(G) in order to comply with the ACP test safe harbor as described in this Section 3.05(G); or (ii) the Plan Administrator must test all Matching Contributions unless the Plan's only Matching Contribution is a Basic Matching Contribution. If the Employer elects to test, the Employer will elect whether to perform the ACP test using Current Year or Prior Year Testing. Prior to the Final 401(k) Regulations Effective Date, the Employer was limited to Current Year Testing under Notice 98-52.

(1) Amount limitations. Under the ACP test safe harbor: (a) the Employer may not make Matching Contributions as to a Participant's Elective Deferrals which exceed 6% of the Participant's Plan Year Compensation; (b) the amount of any Discretionary Additional Matching Contribution allocated to any Participant may not exceed 4% of the Participant's Plan Year Compensation; (c) the rate of Matching Contributions may not increase as the rate of Elective Deferrals increases; and (d) an HCE may not receive a rate of match greater than any NHCE (taking into account HCE aggregation under Section 4.10(C)(6)). Requirement (d) does not apply prior to the Final 401(k) Regulations Effective Date, where such requirement is failed due to the application of Section 3.06 allocation conditions.

(2) No partial ACP test safe harbor. If the Employer's Plan has more than one Matching Contribution formula, each Matching Contribution formula must satisfy the ACP test safe harbor or the Plan Administrator must test all of the Employer's Matching Contributions together under Section 4.10(C) (ACP test).

(3) Employee Contributions. If the Employer in its Adoption Agreement has elected to permit Employee Contributions under the Plan: (a) any Employee Contributions do not satisfy the ACP test safe harbor and the Plan Administrator must test the Employee Contributions under Section 4.10(C) (ACP test) using Current Year Testing or Prior Year Testing as the Employer elects in its Adoption Agreement; and (b) if the Employer in its Adoption Agreement elects to match the Employee Contributions, the Plan Administrator in applying the 6% amount limit in Section 3.05(G)(1) must aggregate a Participant's Elective Deferrals and Employee Contributions which are subject to the 6% limit. Prior to the Final 401(k) Regulations Effective Date, the Employer was limited to Current Year Testing under Notice 98-52.

(H) Safe Harbor Notice. The Plan Administrator must provide a safe harbor notice to each Participant a reasonable period prior to each Plan Year for which the Employer in its Adoption Agreement has elected to apply the safe harbor provisions.

(I) Deemed reasonable notice. The Plan Administrator is deemed to provide timely notice if the Plan Administrator provides the safe harbor notice at least 30 days and not more than 90 days prior to the beginning of the safe harbor Plan Year.

(2) Mid-year notice/new Participant or Plan. If: (a) an Employee becomes eligible to participate in the Plan during a safe harbor Plan Year, but after the Plan Administrator has provided the annual safe harbor notice for that Plan Year; (b) the Employer adopts mid-year a new Safe Harbor 401(k) Plan; or (c) the Employer amends mid-year its existing Profit Sharing Plan to add a 401(k) feature and also elects safe harbor status, the Plan Administrator must provide the safe harbor notice a reasonable period (with 90 days being deemed reasonable) prior to and no later than the Employee's Entry Date.

(3) Content. The safe harbor notice must provide comprehensive information regarding the Participants' rights and obligations under the Plan and must be written in a manner calculated to be understood by the average Participant. The Plan Administrator's notice must satisfy the content requirements of Treas. Reg. §1.401(k)-3(d).

(4) Election following notice. A Participant may make or modify a Salary Reduction Agreement under the Employer's Safe Harbor 401(k) Plan for 30 days following receipt of the safe harbor notice, or if greater, for the period the Plan Administrator specifies in the Salary Reduction Agreement.

(5) Notice failure. If the Plan Administrator for any Plan Year fails to give a timely safe harbor notice or gives a notice which does not satisfy the safe harbor notice content requirements, the Plan is not a Safe Harbor 401(k) Plan for that Plan Year and the Plan Administrator will test the Plan Year Elective Deferrals and Matching Contributions, if any, under Sections 4.10(B) and (C). In such event, notwithstanding the Plan's failure to attain safe harbor status, any Adoption Agreement elections related to the Safe Harbor Contributions continue to apply unless and until the Employer amends the Plan. Notwithstanding the foregoing, if the Employer corrects the safe harbor notice failure under Section 7.08, the Plan is a Safe Harbor 401(k) Plan for the applicable Plan Year.

(I) Mid-Year Changes in Safe Harbor Status.

(1) Contingent ("maybe") notice and supplemental notice-delayed election of Safe Harbor Nonelective Contributions. The Employer during any Plan Year may elect for its Plan to become a Safe Harbor 401(k) Plan under this Section 3.05(I)(1) for that Plan Year, provided: (i) the Plan is using Current Year Testing; (ii) the Employer amends the Plan to add the safe harbor provisions not later than 30 days prior to the end of the Plan Year and to apply the safe harbor provisions for the entire Plan Year; (iii) the Employer elects to satisfy the Safe Harbor Contribution requirement using the Safe Harbor Nonelective Contribution; and (iv) the Plan Administrator provides a notice ("maybe notice") to Participants prior to the beginning of the Plan Year for which the safe harbor amendment may become effective, that the Employer later may elect to become a Safe Harbor 401(k) Plan for that

Plan Year using the Safe Harbor Nonelective Contribution and that if the Employer does so, the Plan Administrator will provide a supplemental notice to Participants at least 30 days prior to the end of that Plan Year informing Participants of the Employer's election to provide the Safe Harbor Nonelective Contribution for that Plan Year. The Employer elects into the safe harbor by timely giving the supplemental notice and by amending the Plan as described above. Except as otherwise specified, the Participant notices described in this Section 3.05(I)(1) also must satisfy the requirements applicable to safe harbor notices under Section 3.05(H).

(a) Effect on Additional Matching Contributions. If the Employer gives a maybe notice under this Section 3.05(I)(1), and then gives the supplemental notice electing into the ADP test safe harbor for the Plan Year, any Additional Matching Contribution the Employer elects in its Adoption Agreement will be subject to the ACP test safe harbor or will be subject to testing under Section 4.10(C) (ACP test) using Current Year Testing, based on the Employer's Adoption Agreement elections relating to the Additional Matching Contributions. If the Employer does not give a supplemental notice, any Matching Contributions are not Additional Matching Contributions in that Plan Year and the Plan Administrator will test all such Matching Contributions under Section 4.10(C) (ACP test) using Current Year Testing.

(2) Exiting safe harbor matching. The Employer may amend its Safe Harbor 401(k) Plan during a Plan Year to reduce or eliminate prospectively, any or all Safe Harbor Matching Contributions or Additional Matching Contributions, provided: (a) the Plan Administrator provides a notice to the Participants which explains the effect of the amendment, specifies the amendment's Effective Date and informs Participants they will have a reasonable opportunity to modify their Salary Reduction Agreements, and if applicable, Employee Contributions; (b) Participants have a reasonable opportunity and period prior to the Effective Date of the amendment to modify their Salary Reduction Agreements, and if applicable, Employee Contributions; and (c) the amendment is not effective earlier than the later of: (i) 30 days after the Plan Administrator gives notice of the amendment; or (ii) the date the Employer adopts the amendment. An Employer which amends its Safe Harbor 401(k) Plan to eliminate or reduce the any Matching Contribution under this Section 3.05(I)(2), effective during the Plan Year, must continue to apply all of the safe harbor requirements of this Section 3.05 until the amendment becomes effective and also must apply for the entire Plan Year, using Current Year Testing, the nondiscrimination test under Section 4.10(B) (ADP test) and the nondiscrimination test under Section 4.10(C) (ACP test). However, any Employer which eliminates only an Additional Matching Contribution does not need to test under the ADP test provided that the Plan still satisfies the ADP test safe harbor.

(3) Amendment of non-401(k) Plan into safe harbor status. An Employer maintaining a Profit Sharing Plan or pre-ERISA Money Purchase Pension Plan, during a Plan Year, may amend prospectively its Plan to become a Safe Harbor 401(k) Plan provided: (a) the Employer's Plan

is not a Successor Plan; (b) the Participants may make Elective Deferrals for at least 3 months during the Plan Year; (c) the Plan Administrator provides the safe harbor notice described in Section 3.05(H) a reasonable time prior to and not later than the Effective Date of the 401(k) arrangement; and (d) the Plan commencing on the Effective Date of the amendment (or such earlier date as the Employer will specify in its Adoption Agreement), satisfies all of the safe harbor requirements of this Section 3.05.

(4) New Plan/new Employer. An Employer (including a new Employer) may establish a new Safe Harbor 401(k) Plan which is not a Successor Plan, provided: (a) the Plan Year is at least 3 months long; (b) the Plan Administrator provides the safe harbor notice described in Section 3.05(H) a reasonable time prior to and not later than the Effective Date of the Plan; and (c) the Plan commencing on the Effective Date of the Plan satisfies all of the safe harbor requirements of this Section 3.05. If the Employer is new, the Plan Year may be less than 3 months provided the Plan is in effect as soon after the Employer is established as it is administratively feasible for the Employer to establish the Plan.

(5) Plan termination. An Employer may terminate its Safe Harbor 401(k) Plan mid-Plan Year in accordance with Article XI and this Section 3.05(I)(5).

(a) Acquisition/disposition or substantial business hardship. If the Employer terminates its Safe Harbor 401(k) Plan resulting in a short Plan Year, and the termination is on account of an acquisition or disposition transaction described in Code §410(b)(6)(C), or if termination is on account the Employer's substantial business hardship, within the meaning of Code §412(d), the Plan remains a Safe Harbor 401(k) Plan for the short Plan Year provided that the Employer satisfies this Section 3.05 through the Effective Date of the Plan termination.

(b) Other termination. If the Employer terminates its Safe Harbor 401(k) Plan for any reason other than as described in Section 3.05(I)(5)(a), and the termination results in a short Plan Year, the Employer must conduct the termination under the provisions of Section 3.05(I)(2), except that the Employer need not provide Participants with the right to change their Salary Reduction Agreements.

3.06 ALLOCATION CONDITIONS. The Employer in its Adoption Agreement will elect the allocation conditions, if any, which the Plan Administrator will apply in allocating Employer Contributions (except for those contributions described below) and in allocating forfeitures allocated as an Employer Contribution under the Plan.

(A) Contributions Not Subject to Allocation Conditions. The Employer may not elect to impose any allocation conditions on: (1) Elective Deferrals; (2) Safe Harbor Contributions; (3) commencing as of the Final 2004 401(k) Regulations Effective Date, Additional Matching Contributions to which the Employer elects to apply the ACP test safe harbor; (4) Employee Contributions; (5) Rollover Contributions; (6) Designated IRA Contributions; (7) SIMPLE Contributions; or (8) Prevailing Wage Contributions, except as may be required by the Prevailing

Wage Contract. The Plan Administrator also may elect under Sections 3.03(C)(2) and 3.04(C)(2), not to apply to any Operational QMAC or Operational QNEC any allocation conditions otherwise applicable to Matching Contributions (including QMACs) or to Nonelective Contributions (including QNECs).

(B) Conditions. The Employer in its Adoption Agreement may elect to impose allocation conditions based on Hours of Service or employment at a specified time (or both), in accordance with this Section 3.06(B). The Employer may elect to impose different allocation conditions to different Employer Contribution Types under the Plan. A Participant does not accrue an Employer Contribution or forfeiture allocated as an Employer Contribution with respect to a Plan Year or other applicable period, until the Participant satisfies the allocation conditions for that Employer Contribution Type.

(1) Hours of Service requirement. Except as required to satisfy the Top-Heavy Minimum Allocation, the Plan Administrator will not allocate any portion of an Employer Contribution for a Plan Year to any Participant's Account if the Participant does not complete the applicable minimum Hours of Service (or consecutive calendar days of employment under the Elapsed Time Method) requirement the Employer specifies in its Adoption Agreement for the relevant period.

(a) 1,000 HOS in Plan Year/other HOS requirement. The Employer in its Nonstandardized Plan or Volume Submitter Plan may elect to require a Participant to complete: (i) 1,000 Hours of Service during the Plan Year (or to be employed for at least 182 consecutive calendar days under the Elapsed Time Method); (ii) a specified number of Hours of Service during the Plan Year which is less than 1,000 Hours of Service; or (iii) a specified number of Hours of Service within the time period the Employer elects in its Adoption Agreement, but not exceeding 1,000 Hours of Service in a Plan Year.

(b) 501 HOS/terminees. The Employer in its Adoption Agreement may elect to require a Participant to complete during a Plan Year 501 Hours of Service (or to be employed for at least 91 consecutive calendar days under the Elapsed Time Method) to share in the allocation of Employer Contributions for that Plan Year where the Participant is not employed by the Employer on the last day of that Plan Year, including the Plan Year in which the Employer terminates the Plan.

(c) Short Plan Year or allocation period. This Section 3.06(B)(1)(c) applies to any Plan Year or to any other allocation time period under the Adoption Agreement which is less than 12 months, where in either case, the Employer creates a short allocation period on account of a Plan amendment, the termination of the Plan or the adoption of the Plan with an initial short Plan Year. In the case of any short allocation period, the Plan Administrator will prorate any Hour of Service requirement based on the number of days in the short allocation period divided by the number of days in the normal allocation period, using 365 days in the case of Plan Year allocation period. The Employer in Appendix B may elect not to pro-rate Hours of

Service in any short allocation period or to apply a monthly pro-ration method.

(2) Last day requirement.

(a) Standardized Plan. If the Plan is a Standardized Plan, a Participant who is employed by the Employer on the last day of a Plan Year will share in the allocation of Employer Contributions for that Plan Year without regard to the Participant's Hours of Service completed during that Plan Year.

(b) Nonstandardized or Volume Submitter Plan. The Employer in its Nonstandardized Plan or Volume Submitter Plan may elect to require a Participant to be employed by the Employer on the last day of the Plan Year or other specified period or on a specified date. If the Plan is a Nonstandardized or Volume Submitter Money Purchase Pension Plan or Target Benefit Plan, the Plan expressly conditions Employer Contribution allocations on a Participant's employment with the Employer on the last day of the Plan Year for the Plan Year in which the Employer terminates or freezes the Plan, even if the Employer in its Adoption Agreement did not elect the "last day of the Plan Year" allocation condition.

(C) Time Period. The Employer in its Adoption Agreement will elect the time period to which the Plan Administrator will apply any allocation condition. The Employer may elect to apply the same time period to all Contribution Types or to elect a different time period based on Contribution Type.

(D) Death, Disability or Normal Retirement Age. The Employer in its Adoption Agreement will elect whether any elected allocation condition applies or is waived for a Plan Year if a Participant incurs a Separation from Service during the Plan Year on account of the Participant's death, Disability or attainment of Normal Retirement Age in the current Plan Year or on account of the Participant's Disability or attainment of Normal Retirement Age in a prior Plan Year. The Employer's election may be based on Contribution Type or may apply to all Contribution Types.

(E) No Other Conditions. In allocating Employer Contributions under the Plan, the Plan Administrator will not apply any other allocation conditions except those the Employer elects in its Adoption Agreement or otherwise as the Plan may require.

(F) Suspension of Allocation Conditions in a Nonstandardized or Volume Submitter Plan. The Employer in its Nonstandardized Plan or Volume Submitter Plan will elect whether to apply the suspension provisions of this Section 3.06(F). If: (i) Section 3.06(F) applies; (ii) the Plan (or any component part of the Plan) in any Plan Year must perform coverage testing; and (iii) the Plan (or component part of the Plan) fails to satisfy coverage under the ratio percentage test under Treas. Reg. §1.410(b)-2(b)(2), the Plan suspends for that Plan Year any Plan (or component part of the Plan) allocation conditions in accordance with this Section 3.06(F). If the Plan Administrator must perform coverage testing, the Administrator will apply testing separately as required to each component part of the Plan after applying the aggregation and disaggregation rules under Treas. Reg. §§1.410(b)-6 and -7.

(1) No average benefit test. If the Employer elects to apply this Section 3.06(F), the Plan Administrator may not apply the average benefit test under Treas. Reg. § 1.410(b)-2(b)(3), to determine satisfaction of coverage or to correct a coverage failure, as to the Plan or to the component part of the Plan to which this Section 3.06(F) applies, unless the Plan or component still fails coverage after application of this Section 3.06(F). The restriction in this Section 3.06(F)(1) does not apply as to application of the average benefit test in performing nondiscrimination testing.

(2) Methodology. If this Section 3.06(F) applies for a Plan Year, the Plan Administrator, in the manner described herein, will suspend the allocation conditions for the NHCEs who are included in the coverage test and who are Participants in the Plan (or component part of the Plan) but who are not benefiting thereunder (within the meaning of Treas. Reg. § 1.410(b)-3), such that enough additional NHCEs are benefiting under the Plan (or component part of the Plan) to pass coverage under the ratio percentage test. The ordering of suspension of allocation conditions is in the following priority tiers and if more than one NHCE in any priority tier satisfies the conditions for suspension (but all are not needed to benefit to pass coverage), the Plan Administrator will apply the suspension beginning first with the NHCE(s) in that suspension tier with the lowest Compensation during the Plan Year:

(a) Last day. Those NHCE(s) employed by the Employer on the last day of the Plan Year, without regard to the number of Hours of Service in the Plan Year. If necessary to pass coverage, the Plan Administrator then will apply Section 3.06(F)(2)(b).

(b) Latest Separation. Those NHCE(s) who have the latest Separation from Service date during the Plan Year, without regard to the number of Hours of Service in the Plan Year. If necessary to pass coverage, the Plan Administrator then will apply Section 3.06(F)(2)(c).

(c) Most Hours of Service (more than 500). Those NHCE(s) with the greatest number of Hours of Service during the Plan Year but who have more than 500 Hours of Service.

(3) Appendix B. The Employer in Appendix B may elect a different order of the suspension tiers, may elect to use Hours of Service (in lieu of Compensation) as a tiebreaker within any tier or may elect additional or other suspension tiers which are objective and not subject to Employer discretion.

(4) Separate Application to Nonelective and Matching. If applicable under the Plan, the Employer in its Adoption Agreement will elect whether to apply this Section 3.06(F): (a) to both Nonelective Contributions and to Matching Contributions if both components fail the ratio percentage test; (b) only to Nonelective Contributions if this component fails the ratio percentage test; or (c) only to Matching Contributions if this component fails the ratio percentage test.

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(G) Conditions Apply to Re-Hired Employees. If a Participant incurs a Separation from Service and subsequently is re-hired and resumes participation in the same Plan Year as the Separation from Service or in any subsequent Plan Year, the allocation conditions under this Section 3.06, if any, continue to apply to the re-hired Employee/Participant in the Plan Year in which he/she is re-hired, unless the Employer elects otherwise in Appendix B.

3.07 FORFEITURE ALLOCATION. The amount of a Participant's Account forfeited under the Plan is a Participant forfeiture. The Plan Administrator, subject to Section 3.06 as applicable, will allocate Participant forfeitures at the time and in the manner the Employer specifies in its Adoption Agreement.

(A) Allocation Method. The Employer in its Adoption Agreement must specify the method the Plan Administrator will apply to allocate forfeitures.

(1) 401(k) forfeiture source. If the Plan is a 401(k) Plan, the Employer in its Adoption Agreement may elect a different allocation method based on the forfeiture source (from Nonelective Contributions or from Matching Contributions) or may elect to apply the same allocation method to all forfeitures.

(a) Attributable to Matching. A Participant's forfeiture is attributable to Matching Contributions if the forfeiture is: (i) from the non-Vested portion of a Matching Contribution Account forfeited in accordance with Section 5.07 or, if applicable, Section 7.07; (ii) a non-Vested Excess Aggregate Contribution (including Allocable Income) forfeited in correcting for nondiscrimination failures under Section 4.10(C); or (iii) an Associated Matching Contribution.

(b) Definition of Associated Matching Contribution. An Associated Matching Contribution includes any Vested or non-Vested Matching Contribution (including Allocable Income) made as to Elective Deferrals or Employee Contributions the Plan Administrator distributes under Section 4.01(E) (Excess Amount), Section 4.10 (A) (Excess Deferrals), Section 4.10(B) (ADP test), Section 4.10(C) (ACP test) or Section 7.08 relating to Plan correction.

(c) Forfeiture or distribution of Associated Match. An Employee forfeits an Associated Matching Contribution unless the Matching Contribution is a Vested Excess Aggregate Contribution distributed in accordance with Section 4.10(C) (ACP test). A forfeiture under this Section 3.07(A)(1)(c) occurs in the Plan Year following the Testing Year (unless the Employer in Appendix B elects that the forfeiture occurs in the Testing Year) and the forfeiture is allocated in the Plan Year described in Section 3.07(B). See Section 3.07(B) (1) as to nondiscrimination testing of allocated forfeitures. In the event of correction under Section 7.08 resulting in forfeiture of Associated Matching Contributions, the forfeiture occurs in the Plan Year of correction.

(2) Application of “reduce” option/excess forfeitures. If the Employer elects to allocate forfeitures to reduce Nonelective or Matching Contributions and the allocable forfeitures for the forfeiture allocation Plan Year described in Section 3.07(B) exceed the amount of the applicable contribution for that Plan Year to which the Plan Administrator would apply the forfeitures (or there are no applicable contributions under the Plan), the Plan Administrator will allocate the remaining forfeitures in the forfeiture allocation Plan Year. In such event, the Plan Administrator will allocate the remaining forfeitures as an additional Discretionary Nonelective Contribution or as a Discretionary Matching Contribution, as the Plan Administrator determines.

(3) Plan expenses. If the Employer in its Adoption Agreement elects to apply forfeitures to the payment of Plan expenses under Section 7.04(C), which for this purpose may also include any Earnings on the forfeitures, the Employer must elect a secondary allocation method so that if the forfeitures exceed the Plan’s expenses, the Plan Administrator will apply any remaining forfeitures under the secondary method the Employer has elected in its Adoption Agreement.

(4) Safe harbor-top-heavy exempt fail-safe. If the Employer has a Safe Harbor 401(k) Plan which otherwise qualifies for exemption from the top-heavy requirements of Article X, the Employer in its Adoption Agreement may elect to limit the allocation of all Plan forfeitures in such a manner as to avoid inadvertent application of the top-heavy requirements on account of a forfeiture allocation. If the Employer in its Adoption Agreement elects this “fail-safe” provision, the Plan Administrator will allocate forfeitures in the following order of priority: (a) first to reduce Safe Harbor Contributions; (b) then to reduce Fixed Additional Matching Contributions if any, which satisfy the ACP test safe harbor under Section 3.05(G); (c) then as Discretionary Additional Matching Contributions which satisfy the ACP safe harbor (without regard to whether the Employer in its Adoption Agreement has elected Discretionary Additional Matching Contributions); and (d) then to pay Plan expenses. If the Employer elects to allocate forfeitures under this Section 3.07(A)(4), the Plan Administrator will apply this Section 3.07(A)(4) regardless of whether the Employer in any Plan Year actually satisfies all conditions necessary for the Plan to be top-heavy exempt. The Employer in Appendix B may elect to alter the forfeiture allocation ordering rules of this Section 3.07(A)(4).

(5) No allocation to Elective Deferral Accounts. The Plan Administrator will not allocate forfeitures to any Participant’s Elective Deferral Account, including his/her Roth Deferral Account.

(6) Allocation under classifications. If the Employer in its Adoption Agreement has elected to allocate its Nonelective Contributions based on classifications of Participants, the Plan Administrator will allocate any forfeitures which under the Plan are allocated as additional Nonelective Contributions: (a) first to each classification pro rata in relation to the Employer’s Nonelective Contribution to that classification for the forfeiture allocation Plan Year described in Section 3.07(B); and (b)

second, the total amount of forfeitures allocated to each classification under (a) are allocated in the same manner as are the Nonelective Contributions to be allocated to that classification.

(B) Timing (forfeiture allocation Plan Year). The Employer in its Adoption Agreement must elect as to forfeitures occurring in a Plan Year, whether the Plan Administrator will allocate the forfeitures in the same Plan Year in which the forfeitures occur or will allocate the forfeitures in the Plan Year which next follows the Plan Year in which the forfeitures occur. See Sections 3.07(A)(1)(c), 5.07 and 7.07 as to when a forfeiture occurs.

(1) 401(k) Plans/allocation timing and re-testing. If the Plan is a 401(k) Plan, the Employer may elect different allocation timing based on the forfeiture source (from Nonelective Contributions or from Matching Contributions) or may elect to apply the same allocation timing to all forfeitures. If the 401(k) Plan is subject to the ACP test and allocates any forfeiture as a Matching Contribution, the following re-testing rules apply. If, under the Plan, the Plan Administrator will allocate the forfeiture in the same Plan Year in which the forfeiture occurs, the Plan Administrator will not re-run the ACP test. If the Plan Administrator allocates the forfeiture in the Plan Year which follows the Plan Year in which the forfeiture occurs, the Plan Administrator will include the allocated forfeiture in the ACP test for the forfeiture allocation Plan Year. If the Plan allocates any forfeiture as a Nonelective Contribution, the allocation, in the forfeiture allocation Plan Year, is subject to any nondiscrimination testing which applies to Nonelective Contributions for that Plan Year.

(2) Contribution amount and timing not relevant. The forfeiture allocation timing rules in this Section 3.07(B) apply irrespective of when the Employer makes its Employer Contribution for the forfeiture allocation Plan Year, and irrespective of whether the Employer makes an Employer Contribution for that Plan Year.

(C) Administration of Account Pending/Incurring Forfeiture. The Plan Administrator will continue to hold the undistributed, non-Vested portion of the Account of a Participant who has incurred a Separation from Service solely for his/her benefit until a forfeiture occurs at the time specified in Section 5.07 or if applicable, until the time specified in Section 7.07.

(D) Participant Does Not Share in Own Forfeiture. A Participant will not share in the allocation of a forfeiture of any portion of his/her Account, even if the Participant otherwise is entitled to an allocation of Employer Contributions and forfeitures in the forfeiture allocation Plan Year described in Section 3.07(B). If the forfeiting Participant is entitled to an allocation of Employer Contributions and forfeitures in the forfeiture allocation Plan Year, the Plan Administrator only will allocate to the Participant a share of the allocable forfeitures attributable to other forfeiting Participants.

(E) Plan Merger. In the event that the Employer merges another plan into this Plan, and does not fully vest upon merger the participant accounts in the merging plan, the Plan Administrator will allocate any post-merger forfeitures attributable to the merging plan in accordance with the Employer's elections in its Adoption Agreement. The Employer may elect to limit any such forfeiture allocation only to those Participants who were also participants in the merged plan, but in the absence of such an election, all Participants who have satisfied any applicable allocation conditions under Section 3.06 will share in the forfeiture allocation.

3.08 ROLLOVER CONTRIBUTIONS. The Plan Administrator will apply this Section 3.08 in administering Rollover Contributions to the Plan, if any.

(A) Policy Regarding Rollover Acceptance. The Plan Administrator, operationally and on a nondiscriminatory basis, may elect to permit or not to permit Rollover Contributions to this Plan or may elect to limit an Eligible Employee's right or a Participant's right to make a Rollover Contribution. The Plan Administrator also may adopt, amend or terminate any policy regarding the Plan's acceptance of Rollover Contributions.

(1) Rollover documentation. If the Plan Administrator permits Rollover Contributions, any Participant (or as applicable, any Eligible Employee), with the Plan Administrator's written consent and after filing with the Plan Administrator the form prescribed by the Plan Administrator, may make a Rollover Contribution to the Trust. Before accepting a Rollover Contribution, the Plan Administrator may require a Participant (or Eligible Employee) to furnish satisfactory evidence the proposed transfer is in fact a "rollover contribution" which the Code permits an employee to make to a qualified plan.

(2) Declination/related expense. The Plan Administrator, in its sole discretion, may decline to accept a Rollover Contribution of property which could: (a) generate unrelated business taxable income; (b) create difficulty or undue expense in storage, safekeeping or valuation; or (c) create other practical problems for the Plan or Trust. The Plan Administrator also may accept the Rollover Contribution on condition that the Participant's or Employee's Account is charged with all expenses associated therewith.

(B) Limited Testing. A Rollover Contribution is not an Annual Addition under Section 4.05(A) and is not subject to nondiscrimination testing except as a "right or feature" within the meaning of Treas. Reg. §1.401(a)(4)-4.

(C) Pre-Participation Rollovers. If an Eligible Employee makes a Rollover Contribution to the Trust prior to satisfying the Plan's eligibility conditions or prior to reaching his/her Entry Date, the Plan Administrator and Trustee must treat the Employee as a limited Participant (as described in Rev. Rul. 96-48 or in any Applicable Law). A limited Participant does not share in the Plan's allocation of Employer Contributions nor Participant forfeitures and may not make Elective Deferrals if the Plan is a 401(k) Plan, until he/she actually becomes a Participant in the Plan. If a limited Participant has a Separation from Service prior to becoming a Participant in the Plan, the Trustee will

distribute his/her Rollover Contributions Account to him/her in accordance with Section 6.01(A).

(D) May Include Employee Contributions and Roth Deferrals. A Rollover Contribution may include Employee Contributions and Roth Deferrals made to another plan, as adjusted for Earnings. In the case of Employee Contributions: (1) such amounts must be directly rolled over into this Plan from another plan which is qualified under Code §401(a); and (2) the Plan must account separately for the Rollover Contribution, including the Employee Contribution and the Earnings thereon. In the case of Roth Deferrals: (1) such amounts must be directly rolled over into this Plan from another plan which is qualified under Code §401(a) or from a 403(b) plan; (2) the Plan must account separately for the Rollover Contribution, including the Roth Deferrals and the Earnings thereon; and (3) as to rollovers which occur on or after April 30, 2007, this Plan must be a 401(k) Plan which permits Roth Deferrals.

3.09 EMPLOYEE CONTRIBUTIONS. An Employer must elect in its Adoption Agreement whether to permit Employee Contributions. If the Employer elects to permit Employee Contributions, the Employer also must specify in its Adoption Agreement any limitations which apply to Employee Contributions. If the Employer permits Employee Contributions, the Plan Administrator operationally will determine if a Participant will make Employee Contributions through payroll deduction or by other means.

(A) Testing. Employee Contributions must satisfy the nondiscrimination requirements of Section 4.10(C) (ACP test).

(B) Matching. The Employer in its Adoption Agreement must elect whether the Employer will make Matching Contributions as to any Employee Contributions and, as applicable, the matching formula. Any Matching Contribution must satisfy the nondiscrimination requirements of Section 4.10(C) (ACP test), unless the Matching Contributions satisfy the ACP test safe harbor under a Safe Harbor 401(k) Plan.

3.10 SIMPLE 401(k) CONTRIBUTIONS. The Employer in its Adoption Agreement may elect to apply to its Plan the SIMPLE 401(k) provisions of this Section 3.10 if the Employer is eligible under Section 3.10(B). The provisions of this Section 3.10 apply to an electing Employer notwithstanding any contrary provision in the Plan.

(A) Plan Year. An Employer electing to apply this Section 3.10 must have a 12 month calendar year Plan Year except that in the case of an Employer adopting a new SIMPLE 401(k) Plan, the Employer must adopt the Plan no later than October 1 with a calendar year Plan Year of at least 3 months.

(B) Eligible Employer. An Employer may elect to apply this Section 3.10 if: (i) the Plan Year is the calendar year; (ii) the Employer (including Related Employers under Section 1.23(C)) has no more than 100 Employees who received Compensation of at least \$5,000 in the

immediately preceding calendar year; and (iii) the Employer (including Related Employers under Section 1.23 (C)) does not maintain any other plan as described in Code §219(g)(5), to which contributions were made or under which benefits were accrued for Service by an Eligible Employee in the Plan Year to which the SIMPLE 401(k) provisions apply.

(1) Loss of eligible employer status. If an electing Employer fails for any subsequent calendar year to satisfy all of the Section 3.10(B) requirements, including where the Employer is involved in an acquisition, disposition or similar transaction under which the Employer satisfies Code §410(b)(6)(C)(i), the Employer remains eligible to maintain the SIMPLE 401(k) Plan for two additional calendar years following the last year in which the Employer satisfied the requirements.

(C) Compensation. For purposes of this Section 3.10, Compensation is limited as described in Section 1.11(E) and: (1) in the case of an Employee, means Code §3401(a) Wages but increased by the Employee's Elective Deferrals under this Plan or any other 401(k) arrangement, SIMPLE IRA, SARSEP, 403(b) annuity or 457 plan of the Employer; and (2) in the case of a Self-Employed Individual, means Earned Income determined by disregarding contributions made to this Plan.

(D) Participant Elective Deferrals. Each Participant may enter into a Salary Reduction Agreement to make Elective Deferrals in each calendar year to the SIMPLE 401(k) Plan in accordance with this Section 3.10(D).

(1) Amount Table. A Participant's annual Elective Deferrals may not exceed the amount in the table below, and, commencing in 2006, such other amount as in effect under Code §408(p)(2)(E) under which Treasury adjusts the limit in \$500 increments.

Year	Amount
2002	\$7,000
2003	\$8,000
2004	\$9,000
2005	\$10,000

(2) Catch-Ups. If the Employer in its Adoption Agreement elects to permit Catch-Up Deferrals, a Catch-Up Eligible Participant also may make Catch-Up Deferrals to the SIMPLE 401(k) Plan in accordance with Section 3.02(D).

(3) Election timing. A Participant may elect to make Elective Deferrals or to modify a Salary Reduction Agreement at any time in accordance with the Plan Administrator's SIMPLE 401(k) Plan Salary Reduction Agreement form, but the form must be provided at least 60 days prior to the beginning of each SIMPLE Plan Year or at least 60 days prior to commencement of participation for the Participant to make or modify his/her Salary Reduction Agreement. A Participant also may at any time terminate prospectively his/her Salary Reduction Agreement applicable to the Employer's SIMPLE 401(k) Plan.

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(E) Employer SIMPLE 401(k) contributions. An Employer which elects to apply this Section 3.10 must make an annual SIMPLE Contribution to the Plan as described in this Section 3.10(E). The Employer operationally must elect for each SIMPLE Plan Year which type of SIMPLE Contribution the Employer will make.

(1) Definition of SIMPLE Contribution. A SIMPLE Contribution is one of the following Employer Contribution types: (a) a SIMPLE Matching Contribution equal to 100% of each Participant's Elective Deferrals but not exceeding 3% of Plan Year Compensation or such lower percentage as the Employer may elect under Code §408(p)(2)(C)(ii)(I); or (b) a SIMPLE Nonelective Contribution equal to 2% of Plan Year Compensation for each Participant whose Compensation is at least \$5,000.

(F) SIMPLE 401(k) notice. The Plan Administrator must provide notice to each Participant a reasonable period of time before the 60th day prior to the beginning of each SIMPLE 401(k) Plan Year, describing the Participant's Elective Deferral rights and the Employer's SIMPLE Contributions which the Employer will make for the Plan Year described in the notice.

(G) Application of remaining Plan provisions.

(1) Annual Additions. All contributions to the SIMPLE 401(k) Plan are Annual Additions under Section 4.05(A) and subject to the Annual Additions Limit.

(2) No allocation conditions. The Employer in its Adoption Agreement may not elect to apply any Section 3.06 allocation conditions to the Plan Administrator's allocation of SIMPLE Contributions.

(3) No other contributions. No contributions other than those described in this Section 3.10 or Rollover Contributions described in Section 3.08 may be made to the SIMPLE 401(k) Plan.

(4) Vesting. All SIMPLE Contributions and Accounts attributable thereto are 100% Vested at all times and in the event of a conversion of a non-SIMPLE 401(k) Plan into a SIMPLE 401(k) Plan, all Account Balances in existence on the first day of the Plan Year to which the SIMPLE 401(k) provisions apply, become 100% Vested.

(5) No nondiscrimination testing. A SIMPLE 401(k) Plan is not subject to nondiscrimination testing under Section 4.10(B) (ADP test) or Section 4.10(C) (ACP test) of the Plan.

(6) No top-heavy. A SIMPLE 401(k) Plan is not subject to the top-heavy provisions of Article X.

(7) Remaining Plan terms. Except as otherwise described in this Section 3.10, if an Employer has elected in its Adoption Agreement to apply the SIMPLE 401(k) provisions of this Section 3.10, the Plan Administrator will apply the remaining Plan provisions to the Employer's Plan.

3.11 USERRA CONTRIBUTIONS.

- (A) Application.** This Section 3.11 applies to an Employee who: (1) has completed Qualified Military Service under USERRA; (2) the Employer has rehired under USERRA; and (3) is a Participant entitled to make-up contributions under Code §414(u).
- (B) Employer Contributions.** The Employer will make-up any Employer Contribution the Employer would have made and which the Plan Administrator would have allocated to the Participant's Account had the Participant remained employed by the Employer during the period of Qualified Military Service.
- (C) Compensation.** For purposes of this Section 3.11, the Plan Administrator will determine an effected Participant's Compensation as follows. A Participant during his/her period of Qualified Military Service is deemed to receive Compensation equal to that which the Participant would have received had he/she remained employed by the Employer, based on the Participant's rate of pay that would have been in effect for the Participant during the period of Qualified Military Service. If the Compensation during such period would have been uncertain, the Plan Administrator will use the Participant's actual average Compensation for the 12 month period immediately preceding the period of Qualified Military Service, or if less, for the period of employment.
- (D) Elective Deferrals/Employee Contributions.** If the Plan provided for Elective Deferrals or for Employee Contributions during a Participant's period of Qualified Military Service, the Plan Administrator must allow a Participant under this Section 3.11 to make up such Elective Deferrals or Employee Contributions to his/her Account. The Participant may make up the maximum amount of Elective Deferrals or Employee Contributions which he/she under the Plan terms would have been able to contribute during the period of Qualified Military Service (less any such amounts the Participant actually contributed during such period) and the Participant must be permitted to contribute any lesser amount as the Plan would have permitted. The Participant must make up any contribution under this Section 3.11(D) commencing on his/her Re-Employment Commencement Date and not later than 5 years following reemployment (or if less, a period equal to 3 times the length of the Participant's Qualified Military Service triggering such make-up contribution).
- (E) Matching Contributions.** The Employer will make-up any Matching Contribution that the Employer would have made and which the Plan Administrator would have allocated to the Participant's Account during the period of Qualified Military Service, but based on any make-up Elective Deferrals or make-up Employee Contributions that the Participant makes under Section 3.11(D).
- (F) Limitations/Testing.** Any contribution made under this Section 3.11 does not cause the Plan to violate and is not subject to testing under: (1) nondiscrimination requirements including under Code §401(a)(4), the ADP test, the ACP test, the safe harbor 401(k) rules or the SIMPLE 401(k) rules; (2) top-heavy requirements under Article X; or (3) coverage under Code §410(b).

Contributions under this Section 3.11 are Annual Additions and are tested under Section 4.10(A) (Elective Deferral Limit) in the year to which such contributions are allocated, but not in the year in which such contributions are made.

(G) No Earnings. A Participant receiving any make-up contribution under this Section 3.11 is not entitled to an allocation of any Earnings on any such contribution prior to the time that the Employer actually makes the contribution (or timely deposits the Participant's own make-up Elective Deferrals or Employee Contributions) to the Trust.

(H) No Forfeitures. A Participant receiving any make-up allocation under this Section 3.11 is not entitled to an allocation of any forfeitures allocated during the Participant's period of Qualified Military Service.

(I) Allocation Conditions. For purposes of applying any Plan allocation conditions under Section 3.06, the Plan Administrator will treat any period of Qualified Military Service as Service.

(J) Other Rules. The Plan Administrator in applying this Section 3.11 will apply DOL Reg. §1002.259-267, and any other Applicable Law addressing the application of USERRA to the Plan.

3.12 DESIGNATED IRA CONTRIBUTIONS. The Employer in its Adoption Agreement may elect to permit Participants to make Designated IRA Contributions to its Plan. Designated IRA Contributions are subject to the provisions of this Section 3.12.

(A) Effective Date. The Employer may elect in its Adoption Agreement to apply the Designated IRA Contribution provisions to any Plan Years beginning after December 31, 2002. For Plan Years commencing after 2003, the Employer may accept Designated IRA Contributions during such Plan Year only if the Employer elects to apply the provisions of this Section 3.12 (or otherwise adopted a good faith amendment under Code §408(q)), prior to the Plan Year for which the Designated IRA Contribution provisions will apply.

(B) Traditional or Roth IRA. The Employer in its Adoption Agreement may elect to treat Designated IRA Contributions as traditional IRA contributions, as Roth IRA contributions or as consisting of either type, at the Participant's election.

(C) Account or Annuity. The Employer in its Adoption Agreement may elect to establish Accounts to receive Designated IRA Contributions either as individual retirement accounts, as individual retirement annuities or as consisting of either type, at the Participant's election.

(I) Trustee or Custodian. A trustee or custodian satisfying the requirements of Code §408(a)(2) must hold Designated IRA Contributions Accounts. If the Trustee holding the Designated IRA Contribution assets is a non-bank trustee, the Trustee, upon receipt of notice from the Commissioner of Internal Revenue that substitution is required because the Trustee has failed to comply with the requirements of Treas. Reg. §1.408-2(e), will substitute another trustee in its place.

(2) Additional IRA requirements. All Designated IRA Contributions: (a) must be made in cash; (b) are subject to the IRA contribution limits under Code §408(a)(1) set forth below, including cost-of-living adjustments after 2008 in \$500 increments under Code §219(b)(5)(C) and as to Catch-Up Eligible Participants to the IRA Catch-Up limits set forth below; and (c) must be 100% Vested.

Taxable Year	IRA contribution limit
2003	\$3,000
2004	\$3,000
2005	\$4,000
2006	\$4,000
2007	\$4,000
2008 and beyond	\$5,000

Taxable year	IRA Catch-Up limit
2003	\$ 500
2004	\$ 500
2005	\$ 500
2006 and beyond	\$1,000

(3) Not for deposit of SEP or SIMPLE IRA amounts/no Rollover Contributions. An Employer which maintains a SEP or a SIMPLE IRA may not deposit contributions under these arrangements to the Designated IRA Contribution Accounts under this Section 3.12. A Participant may not make a Rollover Contribution to his/her Designated IRA Contribution Account.

(4) Designated Roth IRA Contributions.

(a) Contribution Limit. A Participant's contribution to the Designated Roth IRA and to all other Roth IRAs for a Taxable Year may not exceed the lesser of the amount described in Section 3.12(C)(2) or the Participant's Compensation under Section 3.12(C)(4)(c). However, if (i) and/or (ii) below apply, the maximum (non-rollover) contribution that can be made to all the Participant's Roth IRAs (including to this Designated Roth IRA which must be a non-Rollover Contribution) for a Taxable Year is the smaller amount determined under (i) or (ii).

(i) General. The maximum contribution is phased out ratably between certain levels of modified adjusted gross income ("modified AGI," defined in Section 3.12(C)(4)(b)) as follows:

Filing Status	Full Contribution	Phase-out Range	No Contribution
Single/Head of Household	\$95,000 or less	\$95,000-\$110,000	\$110,000 or more
Joint/Qualifying Widow(er)	\$150,000 or less	\$150,000-\$160,000	\$160,000 or more
Married-Separate	\$0	\$0-\$10,000	\$10,000 or more

If the Participant's modified AGI for a Taxable Year is in the phase-out range, the maximum contribution determined above for that Taxable Year is rounded up to the next multiple of \$10 and is not reduced below \$200.

(ii) Roth and non-Roth IRA contributions. If the Participant makes (non-rollover) contributions to both Roth and non-Roth IRAs for a Taxable Year, the maximum contribution that can be made to all of the Participant's Roth IRAs for that Taxable Year is reduced by the contributions made to the Participant's non-Roth IRAs for the Taxable Year.

(iii) Conversion. A Participant may convert a Designated non-Roth IRA Contributions Account to a Designated Roth IRA Contributions Account in accordance with Treas. Reg. §1.408A-4 unless: (A) the Participant is married and files a separate return, (B) the Participant is not married and has modified AGI in excess of \$100,000 or (C) the Participant is married and together the Participant and the Participant's spouse have modified AGI in excess of \$100,000. For purposes of the preceding sentence, spouses are not treated as married for a taxable year if they have lived apart at all times during that Taxable Year and file separate returns for the Taxable Year. A Participant may not effect a conversion by means of contributing a Rollover Contribution to his/her Designated IRA under this Plan.

(b) Modified AGI. For purposes of Section 3.12(C)(4)(a), a Participant's modified AGI for a Taxable Year is defined in Code §408A(c)(3)(C)(i) and does not include any amount included in adjusted gross income as a result of a non-Roth IRA conversion.

(c) Compensation. For purposes of Section 3.12(C)(4)(a), Compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in Code §401(c)(2) (reduced by the deduction the Self-Employed Individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, Code §401(c)(2) shall be applied as if the term "trade or business" for purposes of Code §1402 included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. Compensation includes any amount includible in the Participant's gross income under Code §71 with respect to a divorce or separation instrument described in Code §71(b)(2)(A). In the case of a married Participant filing a joint return, the greater compensation of his or her spouse is treated as the Participant's Compensation, but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a non-Roth IRA.

(D) Accounting and Investments. The Plan Administrator may cause Designated IRA Contributions to be held and invested: (1) in a separate trust for each Participant; (2) as a single trust holding all Participant Designated IRA Contributions; or (3) as part of a single trust holding all of the assets of the Plan. If the Plan Administrator establishes a single trust under clause (2) or (3), the Plan Administrator must account separately for each Participant's Designated IRA Contributions and for the Earnings attributable thereto. If the Designated IRA Contributions are invested in an individual retirement annuity, the Plan Administrator may establish separate annuity contracts for each Participant's Designated IRA Contributions or may establish a single annuity contract for all Participants, with separate accounting for each Participant. If the Plan Administrator establishes a single annuity contract, such contract must be separate from any other annuity contract under the Plan. The Plan Administrator also may invest Designated IRA Contributions in any common or collective fund under Sections 8.02 or 8.09. The Trust provisions of Article VIII otherwise apply to the investment of Designated IRA Contributions except that no part of such contributions may be invested in life insurance contracts and a Participant may not borrow from a Designated IRA Contributions Account or take such amounts into account in determining the maximum amount available for a loan from the Participant's other Plan assets. The Plan Administrator or Trustee/Custodian may not cause Designated IRA Contribution Accounts to be commingled with any non-Plan assets. Any Designated IRA Contribution Account is established for the exclusive benefit of the affected Participant and his/her Beneficiaries. No part of the Trust attributable to Designated IRA Contributions may be invested in collectibles as described in Code §408(m), except as may be permitted under Code §408(m)(3).

(E) Participant Contribution and Designation. A Participant may make Designated IRA Contributions directly or through payroll withholding as the Plan Administrator may permit. At the time of the Participant's contribution (or when the Designated IRA Contribution is withheld from payroll), the Participant must designate the contribution as a Designated IRA Contribution and if applicable, also must designate whether the contribution is traditional or Roth and whether the account is an individual retirement account or an individual retirement annuity.

(F) Treatment as IRA. For all purposes of the Code except as otherwise provided in this Section 3.12, Designated IRA Contributions are subject to the IRA rules under Code §§408 and 408A as applicable. Designated IRA Contributions are not Annual Additions under Section 4.05(A) and are not subject to any testing under Article IV.

(G) Reporting. The Designated IRA Contribution Trustee or Custodian must comply with all Code §408(i) reporting requirements, including providing required information regarding RMDs.

(H) Distribution/RMDs. Designated IRA Contribution Accounts are distributable under Section 6.01(C)(4)(g) and are subject to the RMD requirements of Section 6.02 (and to the Adoption Agreement elections described therein)

except that: (1) the Participant's RBD (only as it relates to the Designated IRA Contribution Account) is determined under Section 6.02(E)(7)(a) referencing age 70 1/2 and without regard to 5% owner or continuing employment status; (2) if the Designated IRA Contribution Account is a Roth Account, there are no lifetime RMDs; and (3) to the extent that the provisions of Section 6.02 differ, RMDs from Designated IRA Contribution Accounts otherwise are subject to the required minimum distribution rules applicable to IRAs under Code §§408(a)(6) or 408A(c)(5) as applicable, and under the corresponding Treasury Regulations, which are incorporated by reference herein.

3.13 DEDUCTIBLE EMPLOYEE CONTRIBUTIONS (DECs). A DEC is a Deductible Employee Contribution made to the Plan for a Taxable Year commencing prior to 1987. If a Participant has made DEC's to the Plan, the Plan Administrator must maintain a separate Account for the Participant's DEC's as adjusted for Earnings, including DEC's which are part of a Rollover Contribution described in Section 3.08. The DEC's Account is part of the Participant's Account for all purposes of the Plan, except for purposes of determining the Top-Heavy Ratio under Section 10.01. The Plan Administrator may not use a Participant's DEC's Account to purchase life insurance on the Participant's behalf. DEC's are distributable under Section 6.01(C)(4)(e).

ARTICLE IV
LIMITATIONS AND TESTING

4.01 ANNUAL ADDITIONS LIMIT — NO OTHER PLANS.

(A) Application of this Section. This Section 4.01 applies only to Participants in this Plan who do not participate, and who have never participated, in another qualified plan, individual medical account (as defined in Code §415(1)(2)), simplified employee pension plan (as defined in Code §408(k)) or welfare benefit fund (as defined in Code §419(e)) maintained by the Employer, which provides an Annual Addition.

(B) Limitation. The amount of Annual Additions which the Plan Administrator may allocate under this Plan to a Participant's Account for a Limitation Year may not exceed the Annual Additions Limit.

(C) Actions to Prevent Excess Annual Additions. If the Annual Additions the Plan Administrator otherwise would allocate under the Plan to a Participant's Account for the Limitation Year would exceed the Annual Additions Limit, the Plan Administrator will not allocate the Excess Amount, but instead will take any reasonable, uniform and nondiscriminatory action the Plan Administrator determines necessary to avoid allocation of an Excess Amount. Such actions include, but are not limited to, those described in this Section 4.01 (C). If the Plan is a 401(k) Plan, the Plan Administrator may apply this Section 4.01 in a manner which maximizes the allocation to a Participant of Employer Contributions (exclusive of the Participant's Elective Deferrals). Notwithstanding any contrary Plan provision, the Plan Administrator, for the Limitation Year, may: (1) suspend or limit a Participant's additional Employee Contributions or Elective Deferrals; (2) notify the Employer to reduce the Employer's future Plan contribution(s) as necessary to avoid allocation to a Participant of an Excess Amount; or (3) suspend or limit the allocation to a Participant of any Employer Contribution previously made to the Plan (exclusive of Elective Deferrals) or of any Participant forfeiture. If an allocation of Employer Contributions previously made (excluding a Participant's Elective Deferrals) or of Participant forfeitures would result in an Excess Amount to a Participant's Account, the Plan Administrator will allocate the Excess Amount to the remaining Participants who are eligible for an allocation of Employer contributions for the Plan Year in which the Limitation Year ends. The Plan Administrator will make this allocation in accordance with the Plan's allocation method as if the Participant whose Account otherwise would receive the Excess Amount is not eligible for an allocation of Employer Contributions. If the Plan Administrator allocates to a Participant an Excess Amount, Plan Administrator must dispose of the Excess Amount in accordance with Section 4.01(E).

(D) Estimated and Actual Compensation. Prior to the determination of the Participant's actual Compensation for a Limitation Year, the Plan Administrator may determine the Annual Additions Limit on the basis of the Participant's estimated annual Compensation for such Limitation Year. The Plan Administrator must make this determination on a

reasonable and uniform basis for all Participants similarly situated. The Plan Administrator must reduce the allocation of any Employer Contributions (including any allocation of forfeitures) based on estimated annual Compensation by any Excess Amounts carried over from prior Limitation Years. As soon as is administratively feasible after the end of the Limitation Year, the Plan Administrator will determine the Annual Additions Limit for the Limitation Year on the basis of the Participant's actual Compensation for such Limitation Year.

(E) Disposition of Allocated Excess Amount. If a Participant receives an allocation of an Excess Amount for a Limitation Year, the Plan Administrator will dispose of such Excess Amount in accordance with this Section 4.01(E).

(1) Employee Contributions. The Plan Administrator first will return to the Participant any Employee Contributions (adjusted for Earnings) and will forfeit any Associated Matching Contributions, to the extent necessary to reduce or eliminate the Excess Amount.

(2) Elective Deferrals. The Plan Administrator next will distribute to the Participant any Elective Deferrals (adjusted for Earnings) and will forfeit any Associated Matching Contributions, to the extent necessary to reduce or eliminate the Excess Amount. If a Participant who will receive a distribution of an Excess Amount has, in the Plan Year for which the corrective distribution is made, contributed both Pre-Tax Deferrals and Roth Deferrals, the Plan Administrator operationally will determine the source(s) from which it will direct the Trustee to make the corrective distribution. The Plan Administrator also may permit the affected Participants to elect the source (s) from which the corrective distribution will be made. However, the amount of a corrective distribution of an Excess Amount to any Participant from the Pre-Tax Deferral or Roth Deferral sources under this Section 4.01(E) (2) may not exceed the amount of the Participant's Pre-Tax Deferrals or Roth Deferrals for the correction year.

(3) Excess Amount remains/Participant still covered. If, after the application of Sections 4.01(E)(1) and (2), an Excess Amount still exists and the Plan covers the Participant at the end of the Limitation Year, the Plan Administrator then will use the Excess Amount(s) to reduce future Employer Contributions (including any allocation of forfeitures) under the Plan for the next Limitation Year and for each succeeding Limitation Year, as is necessary, for the Participant. If the Employer's Plan is a Profit Sharing Plan, a Participant who is an HCE may elect to limit his/her Compensation for allocation purposes to the extent necessary to reduce his/her allocation for the Limitation Year to the Annual Additions Limit and to eliminate the Excess Amount. The Plan Administrator under this Section 4.01(E)(3) will not distribute any Excess Amount(s) to Participants or to former Participants.

(4) Excess Amount remains/Participant not covered/suspense account. If, after the application of Sections 4.01(E)(1) and (2), an Excess Amount still exists

and the Plan does not cover the Participant at the end of the Limitation Year, the Plan Administrator then will hold the Excess Amount unallocated in a suspense account. The Plan Administrator will apply the suspense account to reduce Employer Contributions (including the allocation of forfeitures) for all remaining Participants in the next Limitation Year, and in each succeeding Limitation Year if necessary. Neither the Employer nor any Employee may contribute to the Plan for any Limitation Year in which the Plan is unable to allocate fully a suspense account maintained pursuant to this Section 4.01(E)(4). Amounts held unallocated in a suspense account will not share in any allocation of Earnings. The Plan Administrator under this Section 4.01(E)(4) will not distribute any Excess Amount(s) to Participants or to former Participants.

(5) **Applicable Law.** In addition to any other method described in this Section 4.01(E), the Plan Administrator may dispose of any allocated Excess Amount in accordance with Applicable Law.

4.02 ANNUAL ADDITIONS LIMIT — OTHER 415 AGGREGATED PLANS.

(A) **Application of this Section.** This Section 4.02 applies only to Participants who, in addition to this Plan, participate in one or more Code §415 Aggregated Plans.

(1) **Definition of Code §415 Aggregated Plans.** Code §415 Aggregated Plans means M&P Defined Contribution Plans, welfare benefit funds (as defined in Code §419(e)), individual medical accounts (as defined in Code §415(l)(2)), or simplified employee pension plans (as defined in Code §408(k)) maintained by the Employer and which provide an Annual Addition during the Limitation Year.

(B) **Combined Plans Limitation.** The amount of Annual Additions which the Plan Administrator may allocate under this Plan to a Participant's Account for a Limitation Year may not exceed the Combined Plans Limitation.

(1) **Definition of Combined Plans Limitation.** The Combined Plans Limitation is the Annual Additions Limit, reduced by the sum of any Annual Additions allocated to the Participant's accounts for the same Limitation Year under the Code §415 Aggregated Plans.

(2) **Prevention.** If the amount the Employer otherwise would allocate to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this Section 4.02(B) Combined Plans Limitation, the Employer will reduce the amount of its allocation to that Participant's Account in the manner described in Section 4.01(C), so the Annual Additions under all of the Code §415 Aggregated Plans for the Limitation Year will equal the Annual Additions Limit.

(3) **Correction.** If the Plan Administrator allocates to a Participant an amount attributed to this Plan under Section 4.02(D) which exceeds the Combined Plans Limitation, the Plan Administrator must dispose of the Excess Amount in accordance with Section 4.02(E).

(C) **Estimated and Actual Compensation.** Prior to the determination of the Participant's actual Compensation for the Limitation Year, the Plan Administrator may determine the Combined Plans Limitation on the basis of the Participant's estimated annual Compensation for such Limitation Year. The Plan Administrator will make this determination on a reasonable and uniform basis for all Participants similarly situated. The Plan Administrator must reduce the allocation of any Employer Contribution (including the allocation of Participant forfeitures) based on estimated annual Compensation by any Excess Amounts carried over from prior years. As soon as is administratively feasible after the end of the Limitation Year, the Plan Administrator will determine the Combined Plans Limitation on the basis of the Participant's actual Compensation for such Limitation Year.

(D) **Ordering Rules.** If a Participant's Annual Additions under this Plan and the Code §415 Aggregated Plans result in an Excess Amount, such Excess Amount will consist of the Amounts last allocated. The Plan Administrator will determine the Amounts last allocated by treating the Annual Additions attributable to a simplified employee pension as allocated first, followed by allocation to a welfare benefit fund or individual medical account, irrespective of the actual allocation date. If the Plan Administrator allocates an Excess Amount to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will equal the product of:

(1) the total Excess Amount allocated as of such date, multiplied by

(2) the ratio of (a) the Annual Additions allocated to the Participant as of such date for the Limitation Year under the Plan to (b) the total Annual Additions allocated to the Participant as of such date for the Limitation Year under this Plan and the Code §415 Aggregated Plans.

(E) **Disposition of Allocated Excess Amount Attributable to Plan.** The Plan Administrator will dispose of any allocated Excess Amounts described in and attributed to this Plan under Section 4.02(D) as provided in Section 4.01(E).

4.03 OTHER DEFINED CONTRIBUTION PLANS LIMITATION.

(A) **Application of this Section.** This Section 4.03 applies only to Participants who, in addition to this Plan, participate in one or more qualified Defined Contribution Plans maintained by the Employer during the Limitation Year, but which are not M&P plans described in Section 4.02.

(B) **Limitation.** If a Participant is a participant in another Defined Contribution Plan maintained by the Employer, but which plan is not an M&P plan described in Section 4.02, the Plan Administrator must limit the allocation to the Participant of Annual Additions under this Plan as provided in Section 4.02, as though the other Defined Contribution Plan were an M&P plan.

4.04 **NO COMBINED DCP/DBP LIMITATION.** If the Employer maintains a Defined Benefit Plan, or has ever maintained a Defined Benefit Plan which the Employer has terminated, this Plan does not calculate a combined 415 limit based on the Defined Benefit Plan and this Plan.

4.05 **DEFINITIONS: SECTIONS 4.01-4.04.** For purposes of Sections 4.01 through 4.04:

(A) Annual Additions. Annual Additions means the sum of the following amounts allocated to a Participant's Account for a Limitation Year: (1) Employer Contributions (including Elective Deferrals); (2) forfeitures; (3) Employee Contributions; (4) Excess Amounts reapplied to reduce Employer Contributions under Section 4.01(E) or Section 4.02(E); (5) amounts allocated after March 31, 1984, to an individual medical account (as defined in Code §415(l)(2)) included as part of a pension or annuity plan maintained by the Employer; (6) contributions paid or accrued after December 31, 1985, for taxable years ending after December 31, 1985, attributable to post-retirement medical benefits allocated to the separate account of a key-employee (as defined in Code §419A(d)(3)) under a welfare benefit fund (as defined in Code §419(e)) maintained by the Employer; (7) amounts allocated under a Simplified Employee Pension Plan; and (8) corrected (distributed) Excess Contributions and corrected (distributed) Excess Aggregate Contributions. Excess Deferrals which the Plan Administrator corrects by distribution by April 15 of the following calendar year, are not Annual Additions. Catch-up Contributions and Designated IRA Contributions are not Annual Additions.

(B) Annual Additions Limit. Annual Additions Limit means the lesser of: (i) \$40,000 (or, if greater, the \$40,000 amount as adjusted under Code §415(d)), or (ii) 100% of the Participant's Compensation paid or accrued for the Limitation Year. If there is a short Limitation Year because of a change in Limitation Year (other than as a result of the termination of the Plan), the Plan Administrator will multiply the \$40,000 (as adjusted) limitation by the following fraction:

Number of months (or fractional parts thereof) in the short Limitation Year 12

The 100% Compensation limitation in clause (ii) above does not apply to any contribution for medical benefits within the meaning of Code §401(h) or Code §419A(f)(2) which otherwise is an Annual Addition.

(1) Single plan treatment of Defined Contribution Plans. For purposes of applying the Annual Additions Limit, the Plan Administrator must treat all Defined Contribution Plans (whether or not terminated) maintained by the Employer as a single plan. Solely for purposes of Sections 4.01 through 4.04, employee contributions made to a Defined Benefit Plan maintained by the Employer is a separate Defined Contribution Plan. The Plan Administrator also will treat as a Defined Contribution Plan an individual medical account (as defined in Code §415(l)(2)) included as part of a Defined Benefit Plan maintained by the Employer and a welfare benefit fund under Code §419(e) maintained by the Employer to the

extent there are post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code §419A(d)(3)).

(2) Single plan treatment of Defined Benefit Plans. For purposes of applying the Annual Additions Limit, the Plan Administrator will treat all Defined Benefit Plans (whether or not terminated) maintained by the Employer as a single plan.

(C) Compensation. Compensation for purposes of Code §415 testing means Compensation as defined in Section 1.11(B)(1), (2), (3), or (4), except: (i) Compensation includes Elective Deferrals under Section 1.11(D), irrespective of whether the Employer has elected in its Adoption Agreement to include Elective Deferrals in Compensation for allocation purposes; (ii) Compensation for the entire Limitation Year is taken into account even if the Employer in its Adoption Agreement has elected to include only Participating Compensation for allocation purposes; (iii) Compensation excludes Post-Severance Compensation as defined in Section 1.11(I) unless the Employer in Appendix B elects to include it for purposes of this Section 4.05(C) (and regardless of the Employer's possible Post-Severance Compensation elections in Appendix B as they relate to allocations); and (iv) any other Compensation adjustment or exclusion the Employer has elected in its Adoption Agreement for allocation purposes does not apply.

(1) Effective Date 415 Post-Severance Compensation. The Post-Severance Compensation provisions described in clause (iii) of Section 4.05(C) apply effective as of the date the Employer elects in Appendix B, but may not be effective earlier than January 1, 2005.

(2) "First few weeks rule." The Plan Administrator operationally, but on a uniform and consistent basis as to similarly situated Participants, may elect to include in Compensation for Code §415 purposes Compensation earned in such Limitation Year but which, solely because of payroll timing, is paid in the first few weeks of the next following Limitation Year as described in Treas. Reg. §1.415-2(d)(5)(i) and in Prop. Treas. Reg. §1.415(c)-2(e)(2). This Section 4.05(C)(2) applies to Code §415 testing Compensation but does not affect Compensation for allocation purposes.

(D) Employer. Employer means the Employer and any Related Employer. Solely for purposes of applying the Annual Additions Limit, the Plan Administrator will determine Related Employer status by modifying Code §§414(b) and (c) in accordance with Code §415(h).

(E) Excess Amount. Excess Amount means the excess of the Participant's Annual Additions for the Limitation Year over the Annual Additions Limit.

(F) Limitation Year. See Section 1.33.

(G) M&P Plan. M&P Plan means a Prototype Plan or a Master Plan. See Section 1.48.

4.06 **ANNUAL TESTING ELECTIONS.** The Plan Administrator may elect to test for coverage and nondiscrimination by applying, as applicable, annual testing elections under this Section 4.06.

(A) Changes and Uniformity. In applying any testing election, the Plan Administrator may elect to apply or not to apply such election in any Testing Year, consistent with this Section 4.06. However, the Plan Administrator will apply the testing elections in effect within a Testing Year uniformly to all similarly situated Participants.

(B) Plan Specific Elections. The Employer in its Adoption Agreement must elect for the Plan Administrator to apply the following annual testing elections: (1) nondiscrimination testing under the ADP and ACP tests as a Traditional 401(k) Plan; (2) no nondiscrimination testing as a Safe Harbor 401(k) Plan or nondiscrimination testing under the ACP test as an ADP only Safe Harbor 401(k) Plan; (3) no nondiscrimination testing as a SIMPLE 401(k) Plan; (4) the top-paid group election under Code §414(q)(1)(B)(ii); (5) the calendar year data election under Notice 97-45 or other Applicable Law; (6) Current or Prior Year Testing as a Traditional 401(k) Plan or as an ADP only Safe Harbor 401(k) Plan under Treas. Reg. §§1.401(k)-2(a)(2)(ii) and 1.401(m)-2(a)(2)(ii) and under Notice 98-1 as applicable; and (7) any other testing election which the IRS in the future specifies in written guidance as being subject to a requirement of the Employer making a Plan (versus an operational) election.

(C) Operational Elections. The Plan Administrator operationally may apply any testing election available under Applicable Law, other than those plan specific elections described in 4.06(B), including but not limited to: (i) the "otherwise excludible employees rule" ("OEE rule") under Code §410(b)(4)(B); (ii) the "early participation rule" ("EP rule") under Code §§401(k)(3)(F) and 401(m)(5)(C); (iii) except as Section 4.07 may limit, the application of any Code §414(s) nondiscriminatory definition of compensation for nondiscrimination testing, regardless of the Plan's definitions of Compensation for any other purpose; (iv) application of the general nondiscrimination test under Treas. Reg. §1.401(a)(4)-2(c); (v) application of the "compensation ratio test" under Treas. Reg. §1.414(s)-1(d)(3); (vi) application of imputed permitted disparity under Treas. Reg. §1.401(a)(4)-7; (vii) application of restructuring under Treas. Reg. §1.401(a)(4)-9; (viii) application of the average benefit test under Code §410(b)(2), except as limited under Section 3.06(F); (ix) application of permissive aggregation under Code §410(b)(6)(B); (x) application of the "qualified separate line of business rules" under Code §410(b)(5); (xi) shifting Elective Deferrals from the ADP test to the ACP test; (xii) shifting QMACs from the ACP test to the ADP test; or (xiii) application of the "2 1/2 month rule" in the ADP test under Treas. Reg. §1.401(k)-2(a)(4)(i)(B)(2).

(1) Application of otherwise excludible employees and early participation rules. In applying the OEE and EP rules in clauses (i) and (ii) of Section 4.06(C) above, the Plan Administrator will apply the following provisions.

(a) Definitions of Otherwise Excludible Employees and Includible Employees. For purposes of this Section 4.06(C), an Otherwise Excludible Employee means a Participant who has not reached the Cross-Over

Date. For purposes of this Section 4.06(C), an Includible Employee means a Participant who has reached the Cross-Over Date.

(b) Satisfaction of coverage. To apply the OEE or EP rules for nondiscrimination testing, the Plan must satisfy coverage as to the disaggregated plans under Code §410(b)(4)(B).

(c) Definition of Cross-Over Date. The Cross-Over Date under the OEE rule means when an Employee changes status from the disaggregated plan benefiting the Otherwise Excludible Employees to the disaggregated plan benefiting the Includible Employees. The Cross-Over Date has the same meaning under the EP rule except it is limited only to NHCEs. Under the EP rule, all HCE Participants remain subject to nondiscrimination testing.

(d) Determination of Cross-Over Date. The Plan Administrator may elect to determine the Cross-Over Date for an Employee by applying any date which is not later than the maximum permissible entry date under Code §410(a)(4).

(e) Amounts in testing in Cross-Over Plan Year. For purposes of the OEE rule, the Plan Administrator will count the total Plan Year Elective Deferrals, Matching Contributions, Employer Contributions, and Compensation in the Includible Employees plan test for the Employees who become Includible Employees during such Plan Year. For purposes of applying the EP rule, the Plan Administrator will count the Elective Deferrals, Matching Contributions, Employer Contributions, and Compensation in the single test for the Includible Employees, but only such of these items as are attributable to the period on and following the Cross-Over Date.

(f) Application of other conventions. Notwithstanding Sections 4.06(C)(1)(c), (d), and (e): (i) the Plan Administrator operationally may apply Applicable Law; (ii) the Plan Administrator under a Restated Plan operationally may apply the Plan terms commencing in the Plan Year beginning after the Employer executes the Restated Plan in lieu of applying the Plan terms retroactive to the Plan's restated Effective Date; and (iii) the Plan Administrator operationally may apply any other reasonable conventions, uniformly applied within a Plan Year, provided that any such convention is not inconsistent with Applicable Law.

(g) Allocations not effected by testing. The Plan Administrator's election to apply the OEE or EP rules for testing does not control the Plan allocations, or the Compensation or Elective Deferrals taken into account for Plan allocations. The Plan Administrator will determine Plan allocations, and Compensation and Elective Deferrals for Plan allocations, based on the Employer's Adoption Agreement elections, including elections relating to Participating Compensation or Plan Year Compensation. For this purpose, an election of Participating Compensation means Compensation and Elective Deferrals on and following the Cross-Over Date as to the allocations for the disaggregated plan benefiting the Includible Employees.

(D) Election Timing. Except where the Plan or Applicable Law specifies another deadline for making a Plan specific annual testing election under Section 4.06(B), the Plan Administrator may make any such testing election, and the Employer must amend the Plan as necessary to reflect the election, by the end of the Testing Year. As to any Plan Year ending before the issuance of Rev. Proc. 2005-66, the Plan Administrator may make any Plan specific testing election under Section 4.06(B) and the Employer may make an amendment reflecting such election, as provided under Applicable Law. The Plan Administrator may make operational testing elections under Section 4.06(C) as provided under Applicable Law. If the Employer is correcting an operational Plan failure under EPCRS, the Employer may make an annual testing election for any Testing Year at the time the Employer makes the correction.

(E) Coverage Transition Rule. The Plan Administrator in determining the Plan's compliance with the coverage requirements of Code §410(b), in the case of certain acquisitions or dispositions described in Code §410(b)(6)(C) and in the regulations thereunder, will apply the "coverage transition rule" described therein.

4.07 TESTING BASED ON BENEFITS. In applying the general nondiscrimination test under Section 4.06(C) to any non-uniform Plan allocation, the Plan Administrator may elect to test using allocation rates or using equivalent accrual (benefit) rates ("EBRs") as defined in Treas. Reg. §1.401(a)(4)-(8)(b)(2). In the event that the Plan Administrator elects to test using EBRs, the Plan must comply with this Section 4.07.

(A) Gateway Contribution. Except as provided in Section 4.07(A)(2), if the Employer in its Nonstandardized Plan or Volume Submitter Plan elects an allocation of its Nonelective Contribution which is: (i) based on classifications under Section 3.04(B)(3); (ii) super integrated under Section 3.04(B)(4); or (iii) age-based under Section 3.04(B)(5), and the Plan Administrator will perform nondiscrimination testing using EBRs, the Employer must make a Gateway Contribution. Except as provided in Section 4.07(A)(2), the Employer also must make a Gateway Contribution where the Employer in its Adoption Agreement has elected a non-uniform allocation and the Plan Administrator performs nondiscrimination testing using EBRs.

(1) Definition of Gateway Contribution. A Gateway Contribution is an additional Employer Contribution or Nonelective Contribution in an amount necessary to satisfy the minimum allocation gateway requirement described in Treas. Reg. §1.401(a)(4)-(8)(b)(1)(vi).

(2) Exception to Gateway Contribution requirement. An Employer is not required to make any Gateway Contribution in the event that the Employer's elected allocation under Section 4.07(A) satisfies: (a) the "broadly available allocation rate" requirements; (b) the "age-based allocation with a gradual age or service schedule" requirements; or (c) the uniform target benefit allocation requirements each as described in Treas. Reg. §1.401(a)(4)-(8)(b)(1)(B).

(B) Eligibility for Gateway Contribution. The Plan Administrator will allocate any Gateway Contribution for a Plan Year to each NHCE Participant who receives an allocation of any Employer Contribution or Nonelective Contribution for such Plan Year. The Plan Administrator will allocate the Gateway Contribution without regard to any allocation conditions under Section 3.06 otherwise applicable to Employer Contributions or Nonelective Contributions under the Plan. However, if the Plan Administrator disaggregates the Plan for testing pursuant to the OEE rule under Section 4.06(C), the Otherwise Excludible Employees will not receive an allocation of any Gateway Contribution unless such an allocation is necessary to satisfy Code §401(a)(4).

(C) Amount of Gateway Contribution. The Plan Administrator will allocate any Gateway Contribution pro rata based on the Compensation of each Participant who receives a Gateway Contribution allocation for the Plan Year, but in no event will an allocation of the Gateway Contribution to any Participant exceed the lesser of: (1) 5% of Compensation; or (2) one-third (1/3) of the Highest Allocation Rate for the Plan Year. The Plan Administrator will reduce (offset) the Gateway Contribution allocation for a Participant under either the 5% or the 1/3 Gateway Contribution alternative, by the amount of any other Employer Contributions or Nonelective Contributions the Plan Administrator allocates (including forfeitures allocated as an Employer Contribution or Nonelective Contribution and Safe Harbor Nonelective Contributions, but excluding other QNECs, as defined under Section 1.37(C)) for the same Plan Year to such Participant; provided that if an NHCE is receiving only a QNEC and the QNEC amount equals or exceeds the Gateway Contribution, the QNEC satisfies the Gateway Contribution requirement as to that NHCE. Notwithstanding the foregoing, the Employer may increase the Gateway Contribution to satisfy the provisions of Treas. Reg. §1.401(a)(4)-9(b)(2)(v)(D) if the Plan consists (for nondiscrimination testing purposes) of one or more Defined Contribution Plans and one or more Defined Benefit Plans.

(D) Compensation for 5% Gateway Contribution. For allocation purposes under the 5% Gateway Contribution alternative, "Compensation" means as the Employer elects in the Adoption Agreement, except that the Plan Administrator: (1) will include Elective Deferrals; (2) will limit Compensation to Participating Compensation; and (3) will disregard any other modifications to Compensation the Employer elects in its Adoption Agreement.

(E) Compensation for Determination of Highest Rate and 1/3 Gateway Contribution. The Plan Administrator under the 1/3 Gateway Contribution alternative: (i) will determine the Highest Allocation Rate and the resulting Gateway Contribution rate for the NHCE Participants entitled to the Gateway Contribution; and (ii) will allocate the Gateway Contribution, based on Compensation the Employer elects in its Adoption Agreement, provided that such definition satisfies Code §414(s) and if it does not, the Plan Administrator will allocate the Gateway Contribution based on a Code §414(s) definition which the Plan Administrator operationally selects.

(1) Definition of Highest Allocation Rate. The Highest Allocation Rate means the greatest allocation rate of any HCE Participant and is equal to the Participant's total Employer Contribution or Nonelective Contribution allocation (including any QNECs, Safe Harbor Nonelective Contributions and forfeitures allocated as a Nonelective Contribution or forfeitures allocated as a Money Purchase Pension Contribution) divided by his/her Compensation, as described in this Section 4.07(E).

(F) Employer Contribution Excludes Match. For purposes of this Section 4.07, an Employer Contribution excludes Matching Contributions.

4.08 AMENDMENT TO PASS TESTING. In the event that the Plan fails to satisfy Code §§410 or 401(a)(4) in any Plan Year, the Employer may elect to amend the Plan consistent with Treas. Reg. §1.401(a)(4)-11(g) to correct the failure. The Employer may make such an amendment in any form or manner as the Employer deems reasonable, but otherwise consistent with Section 11.02. Any amendment under this Section 4.08 will not affect reliance on the Plan's Opinion Letter or Advisory Letter.

4.09 APPLICATION OF COMPENSATION LIMIT. The Plan Administrator in performing any nondiscrimination testing under this Article IV will limit each Participant's Compensation to the amount described in Section 1.11(E).

4.10 401(k) (OR OTHER PLAN) TESTING. The Plan Administrator will test Elective Deferrals, Matching Contributions and Employee Contributions under the Employer's 401(k) Plan or other Plan as applicable, in accordance with this Section 4.10. The Plan Administrator, in applying this Section 4.10 will apply the Final 401(k) Regulations Effective Date.

(A) Annual Elective Deferral Limitation. A Participant's Elective Deferrals for a Taxable Year may not exceed the Elective Deferral Limit.

(1) Definition of Elective Deferral Limit. The Elective Deferral Limit is the Code §402(g) limitation on each Participant's Elective Deferrals for each Taxable Year. If the Participant's Taxable Year is not a calendar year, the Plan Administrator must apply the Code §402(g) limitation in effect for the calendar year in which the Participant's Taxable Year begins.

(2) Definition of Excess Deferral. A Participant's Excess Deferral is the amount of Elective Deferrals for a Taxable Year which exceeds the Elective Deferral Limit.

(3) Elective Deferral Limit amount. The Elective Deferral Limit is the following amount for each Taxable Year:

Year	Amount
2002	\$ 11,000
2003	\$ 12,000
2004	\$ 13,000
2005	\$ 14,000
2006	\$ 15,000

(4) COLA after 2006. After the 2006 Taxable Year, the Elective Deferral Limit is subject to adjustment in multiples of \$500 under Code §402(g)(4).

(5) Suspension after reaching limit. If, pursuant to a Salary Reduction Agreement or pursuant to a CODA election, the Employer determines a Participant's Elective Deferrals to the Plan for a Taxable Year would exceed the Elective Deferral Limit, the Employer will suspend the Participant's Salary Reduction Agreement, if any, until the following January 1 and will pay to the Participant in cash the portion of the Elective Deferrals which would result in the Participant's Elective Deferrals for the Taxable Year exceeding the Elective Deferral Limit.

(6) Correction. If the Plan Administrator determines a Participant's Elective Deferrals already contributed to the Plan for a Taxable Year exceed the Elective Deferral Limit, the Plan Administrator will distribute the Excess Deferrals as adjusted for Allocable Income, no later than April 15 of the following Taxable Year (or if later, the date permitted under Code §§7503 or 7508A). See Section 4.11(C)(1) as to Gap Period income.

(7) 415 interaction. If the Plan Administrator distributes the Excess Deferrals by the April 15 deadline under Section 4.10(A)(6), the Excess Deferrals are not an Annual Addition under Section 4.05, and the Plan Administrator may make the distribution irrespective of any other provision under this Plan or under the Code. Elective Deferrals distributed to a Participant as an Excess Amount in accordance with Sections 4.01 through 4.03 are not taken into account in determining the Participant's Elective Deferral Limit.

(8) ADP interaction. The Plan Administrator will reduce the amount of Excess Deferrals for a Taxable Year distributable to a Participant by the amount of Excess Contributions (as determined in Section 4.10(B)), if any, previously distributed to the Participant for the Plan Year beginning in that Taxable Year.

(9) More than one plan. If a Participant participates in another plan subject to the Code §402(g) limitation under which he/she makes elective deferrals pursuant to a 401(k) Plan, elective deferrals under a SARSEP, elective contributions under a SIMPLE IRA or salary reduction contributions to a tax-sheltered annuity (irrespective of whether the Employer maintains the other plan), the Participant may provide to the Plan Administrator a written claim for Excess Deferrals made to the Plan for a Taxable Year. The Participant must submit the claim no later than the March 1 following the close of the particular Taxable Year and the claim must specify the amount of the Participant's Elective Deferrals under this Plan which are Excess Deferrals. The Plan Administrator may require the Participant to provide reasonable evidence of the existence of and the amount of the Participant's Excess Deferrals. If the Plan Administrator receives a timely claim which it approves, the Plan Administrator will distribute the Excess Deferrals (as adjusted for Allocable Income under Section 4.11(C)(1)) the Participant has assigned to this Plan, in accordance with this Section 4.10(A). If a Participant has Excess Deferrals because of making Elective Deferrals to

this Plan and other plans of the Employer (but where the Elective Deferral Limit is not exceeded based on Deferrals to any single plan), the Participant for purposes of this Section 4.10(A)(9) is deemed to have notified the Plan Administrator of this Plan of the Excess Deferrals.

(10) Roth and Pre-Tax Deferrals. If a Participant who will receive a distribution of Excess Deferrals, in the Taxable Year for which the corrective distribution is made, has contributed both Pre-Tax Deferrals and Roth Deferrals, the Plan Administrator operationally will determine the Elective Deferral Account source(s) from which it will direct the Trustee to make the corrective distribution. The Plan Administrator also may permit the affected Participant to elect the source(s) from which the Trustee will make the corrective distribution. However, the amount of a corrective distribution of Excess Deferrals to any Participant from the Pre-Tax Deferral or Roth Deferral sources under this Section 4.10(A)(10) may not exceed the amount of the Participant's Pre-Tax Deferrals or Roth Deferrals for the Taxable Year of the correction.

(B) Actual Deferral Percentage (ADP) Test. If the Employer in its Adoption Agreement has elected to test its 401(k) Plan as a Traditional 401(k) Plan, a Participant's Elective Deferrals for a Plan Year may not exceed the ADP Limit.

(1) Definition of ADP Limit. The ADP Limit is the maximum dollar amount of Elective Deferrals each HCE Participant may defer under the Plan such that the Plan passes the ADP test for that Plan Year.

(2) Definition of Excess Contributions. Excess Contributions are the amount of Elective Deferrals made by the HCEs which exceed the ADP Limit and which may not be recharacterized as Catch-Up Contributions.

(3) ADP test. For each Plan Year, Elective Deferrals satisfy the ADP test if they satisfy either of the following tests:

(a) 1.25 test. The ADP for the HCE Group does not exceed 1.25 times the ADP of the NHCE Group;

or

(b) 2 percent test. The ADP for the HCE Group does not exceed the ADP for the NHCE Group by more than two percentage points and the ADP for the HCE Group is not more than twice the ADP for the NHCE Group.

(4) Calculation of ADP. The ADP for either group is the average of the separate ADRs calculated to the nearest one-hundredth of one percent for each ADP Participant who is a member of that group. The Plan Administrator will include in the ADP test as a zero an ADP Participant who elects not to make Elective Deferrals to the Plan for the Testing Year.

(a) Definition of ADR (actual deferral ratio). An ADP Participant's ADR for a Plan Year is the ratio of the ADP Participant's Elective Deferrals, but excluding Catch-Up Contributions, for the Plan Year to the ADP Participant's Compensation for the Plan Year.

(b) Definitions of ADP Participant and HCE and NHCE Groups. See Sections 4.11(B), (G), and

(H).

(c) Excess Deferrals interaction. In determining the ADP, the Plan Administrator must include any HCE's Excess Deferrals (whether or not corrected), as described in Section 4.10(A), to this Plan or to any other Plan of the Employer and the Plan Administrator will disregard any NHCE's Excess Deferrals.

(d) QNECs and QMACs. The Plan Administrator operationally may include in the ADP test, QNECs and QMACs the Plan Administrator does not use in the ACP test, provided that the Plan passes the ACP test before and after the shifting of any amount from the ACP test to the ADP test. The Plan Administrator may use QNECs or QMACs in the ADP test provided such amounts are not impermissibly targeted under Section 4.10 (D).

(e) Shifting Elective Deferrals to ACP. The Plan Administrator will not count in the ADP test any Elective Deferrals the Plan Administrator operationally elects to shift to the ACP test; provided that the Plan must pass the ADP test both taking into account and disregarding the Elective Deferrals the Plan Administrator shifts to the ACP test.

(f) Current/Prior Year Testing.

(i) Election. In determining whether the Plan's 401(k) arrangement satisfies the ADP test, the Plan Administrator will use Current Year Testing or Prior Year Testing as the Employer elects in its Adoption Agreement. Any such election applies for such Testing Years as the Employer elects (and retroactively as the Employer elects in the case of a Restated Plan).

(ii) Permissible changes. The Employer may amend its Adoption Agreement to change from Prior Year Testing to Current Year Testing at any time, subject to Section 4.06(D). The Employer under Section 4.06(D) may amend its Adoption Agreement to change from Current Year Testing to Prior Year Testing only: (A) if the Plan has used Current Year Testing in at least the 5 immediately preceding Plan Years (or if the Plan has not been in existence for 5 Plan Years, the number of Plan Years the Plan has been in existence); (B) the Plan is the result of aggregation of 2 or more plans and each of the aggregated plans used Current Year Testing for the period described in clause (A); or (C) a transaction occurs to which the coverage transition rule under Code §410(b)(6)(C) applies and as a result, the Employer maintains a plan using Prior Year Testing and a plan using Current Year Testing. Under clause (C), the Employer may make an amendment to change to Prior Year Testing at any time during the coverage transition period.

(iii) Deferrals and QNEC/QMAC deadline/limitation under Prior Year Testing. The Plan Administrator may include Elective Deferrals, QNECs or QMACs in determining the HCE or NHCE ADP only if the Employer makes such contribution to the Plan within 12 months following the end of the Plan Year to which the Elective Deferral relates or to which the Plan Administrator will allocate the QNEC or QMAC. Under Prior Year

Testing, to count the QNEC or QMAC in the ADP test, the Employer must contribute a QNEC or QMAC by the end of the Testing Year. If the Employer's adoption of this Plan is a new Plan (and in the case of a Restated Plan for Testing Years which begin after the date the Employer executes the Restated Plan), the Employer may not make an Operational QNEC or QMAC if the Plan uses Prior Year Testing.

(iv) First Plan Year under Prior Year Testing. For the first Plan Year the Plan permits Elective Deferrals, if the Plan is not a Successor Plan and is using Prior Year Testing, the prior year ADP for the NHCE Group is equal to the greater of 3% or the actual ADP for the NHCE Group in the first Plan Year. If the Plan continues to use Prior Year Testing in the second Plan Year, the Plan Administrator must use the actual first Plan Year ADP for the NHCE Group in the ADP test for the second Plan Year.

(v) Plan coverage changes under Prior Year Testing. If the Employer's Plan is using Prior Year Testing and the Plan experiences a plan coverage change under Treas. Reg. §1.401(k)-2(c)(4), the Plan Administrator will make any adjustments such regulations may require to the NHCEs' ADP for the prior year.

(vi) Shifting contributions and switching from Current Year to Prior Year. If the Plan Administrator is using Current Year Testing and shifts an Elective Deferral to the ACP test or shifts a QMAC to the ADP test, then, in the subsequent Testing Year for which the Plan Administrator switched to Prior Year Testing, the Plan Administrator in applying Prior Year Testing must disregard the shifted amount. As of the Final 401(k) Regulations Effective Date, the Plan Administrator in applying Prior Year Testing in such subsequent Testing Year will restore the ADP and ACP to their original amounts, leaving the shifted amount in the original test without regard to the shift in the previous Testing Year.

(5) Special aggregation rule for HCEs. To determine the ADR of any HCE, the Plan Administrator must take into account any Elective Deferrals made by the HCE (and if used in the ADP test, any QNECs and QMACs allocated to the HCE) under any other 401(k) Plan maintained by the Employer, unless the Elective Deferrals are to an ESOP before the Final 401(k) Regulations Effective Date. If the 401(k) Plans have different Plan Years, the Plan Administrator will determine the combined Elective Deferrals on the basis of the Plan Years ending in the same calendar year. For Plan Years beginning on or after the Final 401(k) Regulations Effective Date, if the 401(k) Plans have different Plan Years, all Elective Deferrals made during the Plan Year will be aggregated. Notwithstanding the foregoing, the Plan Administrator will not apply the aggregation rule of this Section 4.10(B)(5) to plans which may not be aggregated under Treas. Reg. §1.401(k)-2(a)(3)(ii)(B).

(6) Aggregation of certain 401(k) plans. If the Employer treats two or more plans as a single plan for coverage or nondiscrimination purposes, the Employer must combine the 401(k) Plans to determine whether the plans satisfy the ADP test. This aggregation rule applies to the ADR determination for all ADP Participants (and ADP

participants under the other plans), irrespective of whether an ADP Participant is an HCE or an NHCE. An Employer may not aggregate: (a) plans with different Plan Years; (b) a Safe Harbor 401(k) Plan with a non-Safe Harbor 401(k) Plan; (c) plans which use different testing methods (Current Year Testing versus Prior Year Testing); or (d) any other plans which must be disaggregated under Treas. Reg. §1.401(k)-1(b)(4)(iv). For Plan Years prior to the Final 401(k) Regulations Effective Date, the Employer may not aggregate an ESOP (or the ESOP portion of a plan) with a non-ESOP plan (or non-ESOP portion of a plan). If the Employer aggregating 401(k) Plans under this Section 4.10(B)(6) is using Prior Year Testing, the Plan Administrator must adjust the NHCE Group ADP for the prior year as provided in Section 4.10(B)(4)(f)(v).

(7) Characterization of Excess Contributions. If, pursuant to Section 4.10(B)(4)(d), the Plan Administrator has elected to include QMACs in the ADP test, any Excess Contributions are attributable proportionately to Elective Deferrals and to QMACs in the ADP test allocated on the basis of those Elective Deferrals. The Plan Administrator will reduce the amount of Excess Contributions for a Plan Year distributable to an HCE by the amount of Excess Deferrals (as determined in Section 4.10(A)), if any, previously distributed to that Employee for the Employee's Taxable Year ending in that Plan Year.

(8) Distribution of Excess Contributions. If the Plan Administrator determines the Plan fails to satisfy the ADP test for a Plan Year, the Trustee, as directed by the Plan Administrator, by the end of the Plan Year which follows the Testing Year (or any later date determined under Code §7508A), must distribute the Excess Contributions, as adjusted for Allocable Income under Section 4.11(C)(2).

(a) Calculation of total Excess Contributions. The Plan Administrator will determine the total amount of the Excess Contributions to the Plan by starting with the HCE(s) who has the greatest ADR, reducing his/her ADR (but not below the next highest ADR), then, if necessary, reducing the ADR of the HCE(s) at the next highest ADR, including the ADR of the HCE(s) whose ADR the Plan Administrator already has reduced (but not below the next highest ADR), and continuing in this manner until the ADP for the HCE Group is equal to the ADP Limit. All reductions under this Section 4.10(B)(8)(a) are to the ADR only and do not result in any actual distributions.

(b) Apportionment and distribution of Excess Contributions. After the Plan Administrator has determined the total Excess Contribution amount, the Trustee, as directed by the Plan Administrator, then will distribute to each HCE his/her respective share of the Excess Contributions. The Plan Administrator will determine each HCE's share of Excess Contributions by starting with the HCE(s) who has the highest dollar amount of Elective Deferrals, reducing his/her Elective Deferrals (but not below the next highest dollar amount of Elective Deferrals), then, if necessary, reducing the Elective Deferrals of the HCE(s) at the next highest dollar amount of Elective Deferrals including the Elective Deferrals of the HCE(s) whose Elective Deferrals the Plan Administrator already has reduced (but not below the next highest dollar amount of Elective Deferrals), and continuing in this manner until the Trustee has distributed all Excess Contributions.

(c) **Roth and Pre-Tax Deferrals.** If an HCE who will receive a distribution of Excess Contributions, in the Plan Year for which the corrective distribution is made, has contributed both Pre-Tax Deferrals and Roth Deferrals, the Plan Administrator operationally will determine the Elective Deferral Account source(s) from which it will direct the Trustee to make the corrective distribution. The Plan Administrator also may permit the affected Participant to elect the source(s) from which the Trustee will make the corrective distribution. However, the amount of a corrective distribution of Excess Contributions to any Participant from the Pre-Tax Deferral or Roth Deferral sources under this Section 4.10(B)(8)(c) may not exceed the amount of the Participant's Pre-Tax Deferrals or Roth Deferrals for the Testing Year.

(d) **Catch-Up Deferrals re-characterized.** If the Plan permits Catch-Up Contributions and a Catch-Up Eligible Participant exceeds his/her ADP Limit and the Plan Administrator otherwise would distribute the Participant's Excess Contributions, the Plan Administrator instead will re-characterize as a Catch-Up Deferral the portion of such Excess Contributions as is equal to the Participant's unused Catch-Up Deferral Limit applicable to the Testing Year. Any such re-characterized Excess Contribution, plus Allocable Income, will remain in the Participant's Account and the Plan Administrator, for purposes of determining ADP test correction, will treat the re-characterized amount, including Allocable Income, as having been distributed. If the Employer in its Adoption Agreement has elected to match Catch-Up Deferrals, the Plan Administrator will retain in the affected Participant's Account any Matching Contributions made with respect to any Excess Contributions which the Plan Administrator re-characterizes under this Section 4.10(B)(8)(d).

(9) **Allocable Income/Testing Year and Gap Period.** A corrective distribution under Section 4.10(B)(8) must include Allocable Income. See Section 4.11(C)(2).

(10) **Treatment as Annual Additions.** Distributed Excess Contributions are Annual Additions under Sections 4.01 through 4.05 in the Limitation Year in which such amounts were allocated.

(11) **Re-characterization as Employee Contributions.** In addition to the other correction methods under this Section 4.10(B), the Plan Administrator operationally may elect to correct an ADP test failure by re-characterizing the Elective Deferrals in excess of the ADP Limit as Employee Contributions in accordance with Treas. Reg. §1.401(k)-2(b)(3).

(C) **Actual Contribution Percentage (ACP) Test.** If: (i) the Employer in its Adoption Agreement has elected to test its Plan as a traditional 401(k) Plan; (ii) the Employer under its 401(k) Plan has elected only ADP safe harbor plan status and the Employer makes Matching Contributions; or (iii) under any Plan there are Employee Contributions or Matching Contributions (not exempted from ACP testing), a Participant's Aggregate Contributions may not exceed the ACP Limit.

(1) **Definition of ACP Limit.** The ACP Limit is the maximum dollar amount of Aggregate Contributions that each HCE may receive or may make under the Plan such that the Plan passes the ACP test.

(2) **Definition of Aggregate Contributions.** Aggregate Contributions are Matching Contributions and Employee Contributions. Aggregate Contributions also include any QMACs, QNECs and Elective Deferrals the Plan Administrator includes in the ACP test.

(3) **Definition of Excess Aggregate Contributions.** Excess Aggregate Contributions are the amount of Aggregate Contributions allocated on behalf of the HCEs which cause the Plan to fail the ACP test.

(4) **ACP test.** For each Plan Year, Aggregate Contributions satisfy the ACP test if they satisfy either of the following tests:

(a) **1.25 test.** The ACP for the HCE Group does not exceed 1.25 times the ACP of the NHCE Group;

or

(b) **2 percent test.** The ACP for the HCE Group does not exceed the ACP for the NHCE Group by more than two percentage points and the ACP for the HCE Group is not more than twice the ACP for the NHCE Group.

(5) **Calculation of ACP.** The ACP for either group is the average of the separate ACRs calculated to the nearest one-hundredth of one percent for each ACP Participant who is a member of that group. The Plan Administrator will include in the ACP test as a zero an ACP Participant who for the Testing Year: (i) is eligible to make Employee Contributions but who does not do so; or (ii) is eligible to make Elective Deferrals and to receive an allocation of any Matching Contributions based on Elective Deferrals but who does not make any Elective Deferrals. An Employee who fails to satisfy an allocation condition applicable to Matching Contributions is excluded from the ACP test unless the Employee is eligible to make Employee Contributions or the Plan Administrator re-characterizes any of the Employee's Elective Deferrals as Employee Contributions.

(a) **Definition of ACR (actual contribution ratio).** An ACP Participant's ACR for a Plan Year is the ratio of the ACP Participant's Aggregate Contributions for the Plan Year to the ACP Participant's Compensation for the Plan Year.

(b) **Definitions of ACP Participant and HCE and NHCE Groups.** See Section 4.11(A), (G), and (H).

(c) **QNECs and Elective Deferrals.** The Plan Administrator operationally may include in the ACP test QNECs and Elective Deferrals the Plan Administrator does not use in the ADP test, provided that the Plan passes the ADP test before and after the shifting of any amount from the ADP test to the ACP test. The Plan Administrator may use QNECs in the ACP test provided such amounts are not impermissibly targeted under Section 4.10(D).

(d) Shifting QMACs to ADP. The Plan Administrator will not count in the ACP test any QMACs the Plan Administrator operationally elects to shift to the ADP test; provided that the Plan must pass the ACP test both taking into account and disregarding the QMACs the Plan Administrator shifts to the ADP test.

(e) Current/Prior Year Testing.

(i) Election. In determining whether the Plan's 401(k) arrangement satisfies the ACP test, the Plan Administrator will use Current Year Testing or Prior Year Testing as the Employer elects in its Adoption Agreement. Any such election applies for such Testing Years as the Employer elects (and retroactively as the Employer elects in the case of a Restated Plan).

(ii) Permissible changes. The Employer may amend its Adoption Agreement to change from Prior Year Testing to Current Year Testing at any time, subject to Section 4.06(D). The Employer, under Section 4.06(D) may amend its Adoption Agreement to change from Current Year Testing to Prior Year Testing only: (A) if the Plan has used Current Year Testing in at least the 5 immediately preceding Plan Years (or if the Plan has not been in existence for 5 Plan Years, the number of Plan Years the Plan has been in existence); (B) the Plan is the result of aggregation of 2 or more plans and each of the aggregated plans used Current Year Testing for the period described in clause (A); or (C) a transaction occurs to which the coverage transition rule under Code §410(b)(6)(C) applies and as a result, the Employer maintains a plan using Prior Year Testing and a plan using Current Year Testing. Under clause (C), the Employer may make an amendment to change to Prior Year Testing at any time during the coverage transition period.

(iii) Employee Contribution, Matching and QNEC deadline/limitation under Prior Year Testing. The Plan Administrator includes Employee Contributions in the ACP test in the Testing Year in which the Employer withholds the Employee Contributions from the Participant's pay, provided such contributions are contributed to the Trust within a reasonable period thereafter. The Plan Administrator may include Matching Contributions and QNECs in determining the HCE or NHCE ACP only if the Employer makes such contribution to the Plan within 12 months following the end of the Plan Year to which the Plan Administrator will allocate the Matching Contribution or QNEC. Under Prior Year Testing, to count the QNEC in the ACP test, the Employer must contribute a QNEC by the end of the Testing Year. If the Employer's adoption of this Plan is a new Plan (and in the case of a restated Plan effective for Testing Years which begin after the date the Employer executes the restated Plan), the Employer may not make an Operational QNEC if the Plan uses Prior Year Testing.

(iv) First Plan Year under Prior Year Testing. For the first Plan Year the Plan permits Matching Contributions or Employee Contributions, if the Plan is not a Successor Plan and is using Prior Year Testing, the prior

year ACP for the NHCE Group is equal to the greater of 3% or the actual ACP for the NHCE Group in the first Plan Year. If the Plan continues to use Prior Year Testing in the second Plan Year, the Plan Administrator must use the actual first Plan Year ACP for the NHCE Group in the ACP test for the second Plan Year.

(v) Plan coverage changes under Prior Year Testing. If the Employer's Plan is using Prior Year Testing and the Plan experiences a plan coverage change under Treas. Reg. §1.401(m)-2(c)(4), the Plan Administrator will make any adjustments such regulations may require to the NHCEs' ACP for the prior year.

(vi) Shifting contributions and switching from Current Year to Prior Year. If the Plan Administrator is using Current Year Testing and shifts an Elective Deferral to the ACP test or shifts a QMAC to the ADP test, then, in the subsequent Testing Year for which the Plan Administrator switched to Prior Year Testing, the Plan Administrator in applying Prior Year Testing must disregard the shifted amount. As of the Final 401(k) Regulations Effective Date, the Plan Administrator in applying Prior Year Testing in such subsequent Testing Year will restore the ADP and ACP to their original amounts, leaving the shifted amount in the original test without regard to the shift in the previous Testing Year.

(6) Special aggregation rule for HCEs. To determine the ACR of any HCE, the Plan Administrator must take into account any Aggregate Contributions allocated to the HCE under any other 401(m) Plan maintained by the Employer, unless the Aggregate Contributions are to an ESOP before the Final 401(k) Regulations Effective Date. If the 401(m) Plans have different Plan Years, the Plan Administrator will determine the combined Aggregate Contributions on the basis of the Plan Years ending in the same calendar year. For Plan Years beginning on or after the Final 401(k) Regulations Effective Date, if the 401(m) Plans have different Plan Years, all Aggregate Contributions made during the Plan Year will be aggregated. Notwithstanding the foregoing, the Plan Administrator will not apply the aggregation rule of this Section 4.10(C)(6) to plans which may not be aggregated under Treas. Reg. §1.401(m)-2(a)(3)(ii)(B).

(7) Aggregation of certain 401(m) plans. If the Employer treats two or more plans as a single plan for coverage or nondiscrimination purposes, the Employer must combine the 401(m) Plans under such plans to determine whether the plans satisfy the ACP test. This aggregation rule applies to the ACR determination for all ACP Participants (and ACP participants under the other plans), irrespective of whether an ACP Participant is an HCE or an NHCE. An Employer may not aggregate: (a) plans with different Plan Years; (b) a Safe Harbor 401(k) Plan with a non-Safe Harbor 401(k) Plan; (c) plans which use different testing methods (Current Year Testing versus Prior Year Testing); or (d) any other plans which must be disaggregated under Treas. Reg. §1.401(k)-1(b)(4)(iv). For Plan Years prior to the Final 401(k) Regulations Effective Date, the Employer may not aggregate an ESOP (or the ESOP portion of a plan) with a non-ESOP plan (or non-ESOP portion of a plan). If the Employer aggregating 401(m) Plans under this Section 4.10(C)(7) is using Prior Year Testing, the Plan Administrator must adjust the NHCE Group ACP for the prior year as provided in Section 4.10(C)(5)(e)(v).

(8) Distribution of Excess Aggregate Contributions. If the Plan Administrator determines the Plan fails to satisfy the ACP test for a Plan Year, the Trustee, as directed by the Plan Administrator, by the end of the Plan Year which follows the Testing Year (or any later date determined under Code §7508A), must distribute the Vested Excess Aggregate Contributions, as adjusted for Allocable Income under Section 4.11(C)(2).

(a) Calculation of total Excess Aggregate Contributions. The Plan Administrator will determine the total amount of the Excess Aggregate Contributions by starting with the HCE(s) who has the greatest ACR, reducing his/her ACR (but not below the next highest ACR), then, if necessary, reducing the ACR of the HCE(s) at the next highest ACR level, including the ACR of the HCE(s) whose ACR the Plan Administrator already has reduced (but not below the next highest ACR), and continuing in this manner until the ACP for the HCE Group satisfies the ACP test. All reductions under this Section 4.10(C)(8)(a) are to the ACR only and do not result in any actual distributions.

(b) Apportionment and distribution of Excess Aggregate Contributions. After the Plan Administrator has determined the total Excess Aggregate Contribution amount, the Trustee, as directed by the Plan Administrator, then will distribute (to the extent Vested) to each HCE his/her respective share of the Excess Aggregate Contributions. The Plan Administrator will determine each HCE's share of Excess Aggregate Contributions by starting with the HCE(s) who has the highest dollar amount of Aggregate Contributions, reducing the amount of his/her Aggregate Contributions (but not below the next highest dollar amount of the Aggregate Contributions), then, if necessary, reducing the amount of Aggregate Contributions of the HCE(s) at the next highest dollar amount of Aggregate Contributions, including the Aggregate Contributions of the HCE(s) whose Aggregate Contributions the Plan Administrator already has reduced (but not below the next highest dollar amount of Aggregate Contributions), and continuing in this manner until the Trustee has distributed all Excess Aggregate Contributions.

(9) Allocable Income/Testing Year and Gap Period. The Plan Administrator will calculate and will distribute Excess Aggregate Contribution Allocable Income in the same manner as described in Section 4.10(B)(9) for Excess Contributions.

(10) Testing and correction ordering. If the Plan Administrator must perform both the ADP and ACP tests in a given Plan Year, the Plan Administrator may perform the tests and undertake correction of a failed test in any order that the Plan Administrator determines and which is not inconsistent with Applicable Law, with a view toward preserving Plan benefits, maximizing Employer Contributions in the Plan versus Employee Contributions or Elective Deferrals, and minimizing forfeitures. Toward this end, the Plan Administrator may treat an HCE's allocable share of Excess Aggregate Contributions in the following

priority: (a) first as attributable to his/her Employee Contributions and Matching Contributions thereon, if any; (b) then as attributable to Matching Contributions allocable as to Excess Contributions determined under the ADP test such that the Plan Administrator distributes any Vested Excess Aggregate Contribution to reduce the amount of Associated Matching Contribution subject to forfeiture (irrespective of vesting). See Section 3.07(B)(1) as to testing or re-testing related to forfeiture allocations. To the extent that distributed Excess Aggregate Contributions include Elective Deferrals, and the Participant in that Testing Year made both Pre-Tax Deferrals and Roth Deferrals, the ordering rules under Sections 4.10(A)(10) and 4.10(B)(8)(c) apply.

(11) Vesting/forfeiture of non-Vested Excess Aggregates. To the extent an HCE's Excess Aggregate Contributions are attributable to Matching Contributions, and he/she is not 100% Vested in his/her Matching Contribution Account, the Plan Administrator will distribute only the Vested portion and will forfeit the non-Vested portion. The Vested portion of the HCE's Excess Aggregate Contributions attributable to Employer Matching Contributions is the total amount of such Excess Aggregate Contributions (as adjusted for allocable income) multiplied by his/her Vested percentage (determined as of the last day of the Plan Year for which the Employer made the Matching Contribution).

(12) Treatment as Annual Addition. Distributed Excess Aggregate Contributions are Annual Additions under Sections 4.01 through 4.05 in the Limitation Year in which such amounts were allocated.

(D) QNEC, Matching and QMAC Targeting Restrictions. The Plan Administrator in performing the ADP or ACP tests may not include in the tests any impermissibly targeted QNEC or Matching Contribution as described in this Section 4.10(D). These targeting restrictions apply as of the Final 401(k) Regulations Effective Date to Matching Contributions, to Plan-Designated and Operational QNECs and to Plan-Designated and Operational QMACs. The Employer will not contribute Operational QNECs or QMACs which would violate the targeting restrictions.

(1) QNEC targeting rules. The Plan Administrator may include in the ADP test or in the ACP test only such amounts of any QNEC as are not impermissibly targeted. A QNEC is impermissibly targeted if the QNEC amount allocated to any NHCE exceeds the greater of: (a) 5% of Compensation; or (b) 2 times the Plan's Representative Contribution Rate.

(a) Definition of Representative Contribution Rate.

(i) ADP. The Plan's ADP Representative Contribution Rate is the lowest ADP Applicable Contribution Rate of any ADP Participants who are NHCEs in a group consisting of: (A) any one-half of the ADP Participants who are NHCEs for the Plan Year; or (B) if it would result in a greater Representative Contribution Rate than under clause (A), all of the ADP Participants who are NHCEs and who are employed by the Employer on the last day of the Plan Year.

(ii) **ACP.** The Plan's ACP Representative Contribution Rate is the lowest ACP Applicable Contribution Rate of any ACP Participants who are NHCEs in a group consisting of: (A) any one-half of the ACP Participants who are NHCEs for the Plan Year; or (B) if it would result in a greater Representative Contribution Rate than under clause (A), all of the ACP Participants who are NHCEs and who are employed by the Employer on the last day of the Plan Year.

(b) Definition of Applicable Contribution Rate.

(i) **ADP.** The Applicable Contribution Rate of an ADP Participant who is an NHCE for the ADP test is the sum of the NHCE's QNECs and QMACs used in the ADP test, divided by the NHCE's Compensation.

(ii) **ACP.** The Applicable Contribution Rate of an ACP Participant who is an NHCE for the ACP test is the sum of the NHCE's Matching Contributions and QNECs used in the ACP test, divided by the NHCE's Compensation.

(c) **QNEC in ACP test.** The Plan Administrator may not use in the ADP test or take into account in determining the Plan's Representative Contribution Rate, any QNEC the Plan Administrator applies to the ACP test.

(d) **Prevailing Wage Contribution.** Notwithstanding Section 4.10(D)(1), the Plan Administrator may count in the ADP test QNECs which are Prevailing Wage Contributions to the extent that such QNECs do not exceed 10% of Compensation. The Plan Administrator also may count in the ACP test a QNEC which is a Prevailing Wage Contribution up to an additional 10% of Compensation, such that the combined QNEC amount does not exceed 20% of Compensation and not more than 10% in either test.

(2) **Matching Contribution targeting rules.** The Plan Administrator may include in the ACP test only such Matching Contribution amounts (including QMACs) as are not impermissibly targeted. A Matching Contribution is impermissibly targeted if the Matching Contribution amount allocated to any NHCE exceeds the greatest of: (i) 5% of Compensation; (ii) the amount of the NHCE's Elective Deferrals; or (iii) the product of 2 times the Plan's Representative Matching Rate and the NHCE's Elective Deferrals for the Plan Year.

(a) **Definition of Representative Matching Rate.** The Plan's Representative Matching Rate is the lowest Matching Rate for any ACP Participants who are NHCEs in a group consisting of: (i) any one-half of the ACP Participant NHCEs who make Elective Deferrals for the Plan Year; or if it would result in a greater Representative Matching Rate, (ii) all of the ACP Participant NHCEs who make Elective Deferrals for the Plan Year and who are employed by the Employer on the last day of the Plan Year.

(b) **Definition of Matching Rate.** The Matching Rate for an NHCE is the NHCE's Matching Contributions divided by his/her Elective Deferrals; provided that if the Matching Rate is not the same for all levels of Elective Deferrals, the Plan Administrator will determine each NHCE's Matching Rate by assuming an Elective Deferral equal to 6% of Compensation.

(c) **Employee Contributions.** If the Plan permits Employee Contributions, the Plan Administrator will apply this Section 4.10(D)(2) by adding together an NHCE's Employee Contributions and Elective Deferrals. If the Plan provides a Matching Contribution only as to Employee Contributions, the Plan Administrator will apply this Section 4.10(D)(2) by substituting the Employee Contributions for Elective Deferrals.

(3) **Accrued fixed contributions.** The Employer must contribute any accrued fixed contribution, even if any or all of such contribution is impermissibly targeted under this Section 4.10(D).

4.11 **DEFINITIONS: SECTIONS 4.06-4.10.** For purposes of Sections 4.06 through 4.10:

(A) **ACP Participant.** ACP Participant means an Eligible Employee who has satisfied the eligibility requirements under Article II and the allocation conditions under Section 3.06 applicable to Matching Contributions such that the Participant would be entitled to a Matching Contribution allocable to the Testing Year if he/she makes an Elective Deferral. An ACP Participant also includes an Eligible Employee who has satisfied the eligibility requirements under Article II applicable to Employee Contributions and who has the right at any time during the Testing Year to make Employee Contributions. Any Employee with zero Compensation for the Testing Year is not an ACP Participant.

(B) **ADP Participant.** ADP Participant means an Eligible Employee who has satisfied the eligibility requirements under Article II applicable to any Elective Deferrals and who has the right at any time during the Testing Year to make Elective Deferrals. Any Employee with zero Compensation for the Testing Year is not an ADP Participant. A Participant is an ADP Participant even if he/she may not make Elective Deferrals for all or any part of the Testing Year because of the Annual Additions Limit or suspension based on a hardship distribution under Section 6.07.

(C) **Allocable Income.** Allocable Income means as follows:

(1) **Excess Deferrals.** For purposes of making a distribution of Excess Deferrals pursuant to Section 4.10 (A), Allocable Income means Earnings allocable to the Excess Deferrals for the Taxable Year in which the Participant made the Excess Deferral. The Plan Administrator also will distribute Gap Period income with respect to Excess Deferrals in Taxable Years which began on or after January 1, 2007, if the Plan Administrator in accordance with the Plan terms otherwise would allocate the Gap Period Allocable Income to the Participant's Account. The Plan Administrator will not distribute Gap Period income with respect to Excess Deferrals occurring before the above date unless the Employer elects otherwise in Appendix B.

(a) Reasonable or alternative (pro rata) method. To calculate such Allocable Income for the Taxable Year, the Plan Administrator will use: (i) a uniform and nondiscriminatory method which reasonably reflects the manner used by the Plan Administrator to allocate Earnings to Participants' Accounts; or (ii) the "alternative method" under Treas. Reg. §1.402(g)-1(e)(5)(iii). See Section 4.11(C)(2)(a) as to the alternative method except the Plan Administrator will apply such modifications as are necessary to determine Taxable Year Allocable Income with respect to the Excess Deferrals.

(b) Gap Period. To calculate Gap Period Allocable Income, the Plan Administrator may use either of the Section 4.11(C)(1)(a) methods, or may apply the "safe harbor method" under Treas. Reg. §1.402(g)-1(e)(5)(iv). See Section 4.11(C)(2)(b) as to the safe harbor method except the Plan Administrator will apply such modifications as are necessary to determine Gap Period Allocable Income with respect to the Excess Deferrals. Under a reasonable method described in Section 4.11(C)(1)(a), clause (i), the Plan Administrator may determine the Allocable Income as of a date which is no more than 7 days prior to the date of the corrective distribution.

(2) Excess Contributions/Aggregates. For purposes of making a distribution of Excess Contributions under Section 4.10(B) and Excess Aggregate Contributions under Section 4.10(C), Allocable Income means Earnings allocable to such amounts. For Plan Years beginning on or after the Final 401(k) Regulations Effective Date, the Plan Administrator must calculate Allocable Income for the Testing Year and also for the Gap Period; provided that the Plan Administrator will calculate and distribute the Gap Period Allocable Income only if the Plan Administrator in accordance with the Plan terms otherwise would allocate the Gap Period Allocable Income to the Participant's Account. For Plan Years beginning prior to the Final 401(k) Regulations Effective Date, the Plan Administrator will not distribute Gap Period income with respect to Excess Contributions or Excess Aggregate Contributions occurring before the above date unless the Employer elects otherwise in Appendix B.

(a) Reasonable or alternative (pro rata) method. To calculate such Allocable Income for the Testing Year, the Plan Administrator will use: (i) a uniform and nondiscriminatory method which reasonably reflects the manner used by the Plan Administrator to allocate Earnings to Participants' Accounts; or (ii) the "alternative method" under Treas. Reg. §§1.401(k)-2(b)(2)(iv)(C) and 1.401(m)-2(b)(2)(iv)(C). Under the alternative method, the Plan Administrator will determine the Allocable Income for the Testing Year by multiplying the Testing Year income with respect to Participant's Excess Contributions (or Excess Aggregate Contributions) by a fraction, the numerator of which is the Participant's Excess Contributions (or Excess Aggregate Contributions) and the denominator of which is the Participant's end of the Testing Year Account Balance attributable to Elective Deferrals (or

Matching Contributions and Employee Contributions) and any other amounts included in the ADP test (or ACP test), but disregarding Earnings on such amounts for the Testing Year.

(b) Gap Period. To calculate Gap Period Allocable Income, the Plan Administrator may use either of the Section 4.11(C)(2)(a) "reasonable method" or "alternative method" (but as modified to include the Gap Period), or may apply the "safe harbor method" under Treas. Reg. §§1.401(k)-2(b)(2)(iv)(D) and 1.401(m)-2(b)(2)(iv)(D). Under the safe harbor method, the Gap Period Allocable Income is equal to 10% of the Testing Year income determined under alternative method, multiplied by the number of calendar months in the Gap Period. If a corrective distribution is made on or before the 15th day of a month, that month is disregarded in determining the number of months in the Gap Period. If the corrective distribution is made after the 15th day of the month, that month is included in such calculation. Under a reasonable method described in Section 4.11(C)(2)(a), clause (i), the Plan Administrator may determine the Allocable Income as of a date which is no more than 7 days prior to the date of the corrective distribution.

(D) Compensation. Compensation means, except as otherwise provided in this Article IV, Compensation as defined for nondiscrimination purposes in Section 1.11(F).

(E) Current Year Testing. Current Year Testing means for purposes of the ADP test described in Section 4.10(B) and the ACP test described in Section 4.10(C), the use of data from the Testing Year in determining the ADP or ACP for the NHCE Group.

(F) Gap Period. Gap Period means the period commencing on the first day of the next Plan Year following the Testing Year and ending on the date the Plan Administrator distributes Excess Contributions or Excess Aggregate Contributions for the Testing Year. As to Excess Deferrals, Gap Period means the period commencing on the first day of the next Taxable Year following the Taxable Year in which the Participant made the Excess Deferrals and ending on the date the Plan Administrator distributes the Excess Deferrals.

(G) HCE Group. HCE Group means the group of ADP Participants or ACP Participants (as the context requires) who are HCEs for the Testing Year.

(H) NHCE Group. NHCE Group means the group of ADP Participants or ACP Participants (as the context requires) who are NHCEs for the Testing Year, or for the immediately prior Plan Year under Prior Year Testing, except as the Testing Year may apply in the first Plan Year.

(I) Prior Year Testing. Prior Year Testing means for purposes of the ADP test described in Section 4.10(B) and the ACP test described in Section 4.10(C), the use of data from the Plan Year immediately prior to the Testing Year in determining the ADP or ACP for the NHCE Group.

(J) Testing Year. Testing Year means the Plan Year for which the Plan Administrator is performing coverage or nondiscrimination testing including the ADP test or the ACP test.

**ARTICLE V
VESTING**

5.01 **NORMAL/EARLY RETIREMENT AGE.** The Employer in its Adoption Agreement must specify the Plan's Normal Retirement Age. If the Employer fails to specify the Plan's Normal Retirement Age in its Adoption Agreement, the Employer is deemed to have elected age 65 as the Plan's Normal Retirement Age. The Employer in its Adoption Agreement may specify an Early Retirement Age. A Participant's Account Balance derived from Employer contributions is 100% Vested upon and after his/her attaining Normal Retirement Age (or if applicable, Early Retirement Age) if the Participant is employed by the Employer on or after that date and regardless of the Participant's Years of Service for vesting or the Employer's Adoption Agreement elected vesting schedules.

5.02 **PARTICIPANT DEATH OR DISABILITY.** The Employer must elect in its Adoption Agreement whether a Participant's Account Balance derived from Employer Contributions is 100% Vested if the Participant's Separation from Service is a result of his/her death or Disability.

5.03 **VESTING SCHEDULE.**

(A) **General.** Except as provided in Sections 5.01 and 5.02, or unless the Employer in its Adoption Agreement elects immediate vesting, for each Year of Service as described in Section 5.05, a Participant's Vested percentage of his/her Account Balance derived from Nonelective Contributions, Regular Matching Contributions, Additional Matching Contributions, Money Purchase Pension Contributions or Target Benefit Contributions equals the percentage under the appropriate vesting schedule the Employer has elected in its Adoption Agreement.

(1) **Matching/top-heavy schedule.** The Employer must elect to apply a top-heavy (or modified top-heavy) vesting schedule to the Regular Matching Contributions and to the Additional Matching Contributions. The top-heavy vesting schedule applies to all Regular Matching Contributions Accounts and Additional Matching Contributions Accounts of all Participants who have at least one Hour of Service in a Plan Year beginning after December 31, 2001, regardless of when the Matching Contributions were made. However, the Employer in Appendix B: (a) may elect to apply the top-heavy vesting schedule only to Regular Matching Contributions and Additional Matching Contributions made in Plan Years beginning after December 31, 2001 and to the associated Earnings; and (b) may elect to apply top-heavy vesting to the affected Matching Contributions for all Participants even if they do not have one Hour of Service in a Plan Year beginning after December 31, 2001. If the Employer elects in its Adoption Agreement to apply a non-top-heavy schedule to Employer Contributions other than Matching Contributions, the Employer must also elect in its Adoption Agreement, that in the event that the Plan becomes top-heavy and then later becomes non-top-heavy, whether to return to the elected non-top-heavy schedule commencing in the non-top-heavy Plan Year. If the Employer elects a non-compliant top-heavy schedule, the Plan Administrator will apply a top-heavy schedule under the Plan which most closely approximates the Employer's elected schedule (graded or cliff).

(2) **Election of different schedules.** Subject to Section 5.03(A)(1), the Employer in its Adoption Agreement must elect whether the Plan will apply the same vesting schedule or a different vesting schedule to Employer Contributions (other than Matching Contributions), Regular Matching Contributions and Additional Matching Contributions.

(B) **Vesting Schedules.** For purposes of the Employer's elections under its Adoption Agreement, "6-year graded," "3-year cliff," "7-year graded" or "5-year cliff" means an Employee's Vested percentage, based on each included Year of Service, under the following applicable schedule:

6-year graded	7-year graded
0-1 year / 0%	0-2 years / 0%
2 years / 20%	3 years / 20%
3 years / 40%	4 years / 40%
4 years / 60%	5 years / 60%
5 years / 80%	6 years / 80%
6 years / 100%	7 years / 100%
3-year cliff	5-year cliff
0-2 years / 0%	0-4 years / 0%
3 years / 100%	5 years / 100%

(C) **"Grossed-Up" Vesting Formula.** If the Trustee makes a distribution (other than a Cash-Out Distribution described in Section 5.04) to a Participant from an Account which is not fully Vested, and the Participant has not incurred a Forfeiture Break in Service, the provisions of this Section 5.03(C) apply to the Participant's Account Balance.

(1) **Separate Account/formula.** The Plan Administrator will establish a separate account for the Participant's Account Balance at the time of the distribution. At any relevant time following the distribution, the Plan Administrator will determine the Participant's Vested Account Balance in such separate account derived from Employer Contributions in accordance with the following formula: $P(AB + D) - D$. To apply this formula, "P" is the Participant's current vesting percentage at the relevant time, "AB" is the Participant's Employer-derived Account Balance at the relevant time and "D" is the amount of the earlier distribution. If, under a Restated Plan, the Plan has made distribution to a partially-Vested Participant prior to its restated Effective Date and is unable to apply the cash-out provisions of Section 5.04 to that prior distribution, this special vesting formula also applies to that Participant's remaining Account Balance.

(2) **Alternative formula.** The Employer, in Appendix B, may elect to modify this formula to read as follows: $P(AB + (R \times D)) - (R \times D)$. For purposes of this alternative formula, "R" is the ratio of "AB" to the Participant's Employer-derived Account Balance immediately following the earlier distribution.

(3) Application to Contribution Type. If a Participant will receive a distribution from a particular Contribution Type, the Plan Administrator in applying this Section 5.03(C) will determine the Participant's Vested Account Balance for the Participant's Contribution Type separately.

(D) Special Vesting Elections. The Employer in its Adoption Agreement may elect other specified vesting provisions which are consistent with Code §411 and Applicable Law.

(E) Fully Vested Amounts. A Participant has a 100% Vested interest at all times in his/her Accounts attributable to Elective Deferrals, Employee Contributions, QNECs, QMACs, Safe Harbor Contributions, SIMPLE Contributions, Rollover Contributions, DECs and Designated IRA Contributions. A Participant has a 100% Vested interest at all times in his/her Account attributable to Prevailing Wage Contributions unless the Prevailing Wage Contract does not provide for 100% vesting in which event vesting is in accordance with the Prevailing Wage Contract. However, a Participant has a 100% Vested interest at all times in his/her Account attributable to Prevailing Wage Contributions which are used as QNECs or which are used to offset QNECs, QMACs, Safe Harbor Contributions, or SIMPLE Contributions.

(F) Mergers/Transfers. A merger or Transfer of assets from another Defined Contribution Plan to this Plan does not result, solely by reason of the merger or Transfer, in 100% vesting of the merged or transferred assets. The Plan Administrator operationally and on a uniform and nondiscriminatory basis will determine in the case of a merger or other Transfer to the Plan whether: (1) to vest immediately all transferred assets; (2) to vest the transferred assets in accordance with the Plan's vesting schedule applicable to the Contribution Type being transferred but subject to the requirements of Section 5.08; or (3) to vest the transferred assets in accordance with the transferor plan's vesting schedule(s) applicable to the Contribution Types being transferred, as such schedules existed on the date of the Transfer. The Employer may elect to record such information in its Adoption Agreement as a special vesting election.

5.04 CASH-OUT DISTRIBUTION/POSSIBLE RESTORATION.

(A) Effect of Cash-Out Distribution. If, pursuant to Article VI, a partially-Vested Participant receives a Cash-Out Distribution before he/she incurs a Forfeiture Break in Service the Participant will incur an immediate forfeiture of the non-Vested portion of his/her Account Balance.

(1) Definition of Cash-Out Distribution. A Cash-Out Distribution is a distribution to the Participant or a Direct Rollover for the Participant (whether a Mandatory Distribution or a Distribution Requiring Consent as described in Article VI), of his/her entire Vested Account Balance (including Elective Deferrals and Employee Contributions if any) due to the Participant's Separation from Service or Severance from Employment.

(2) Allocation in Cash-Out Year. If a partially-Vested Participant's Account is entitled to an allocation of Employer Contributions or Participant forfeitures for the Plan Year in which he/she otherwise would incur a forfeiture by reason of a Cash-Out Distribution, the Plan Administrator will make the additional allocation of Employer Contributions and forfeitures without regard to whether the Participant previously received a Cash-Out Distribution; provided, that the Plan Administrator, in accordance with Section 3.07(D), will not allocate to such Participant any of his/her own forfeiture resulting from the Cash-Out Distribution. A partially-Vested Participant is a Participant whose Vested percentage determined under Section 5.03 is more than 0% but is less than 100%.

(B) Forfeiture Restoration and Conditions for Restoration. A partially-Vested Participant re-employed by the Employer after receiving a Cash-Out Distribution of the Vested percentage of his/her Account Balance may repay to the Trust the entire amount of the Cash-Out Distribution (including Elective Deferrals and Employee Contributions if any) without any adjustment for Earnings, unless the Participant no longer has a right to restoration under this Section 5.04(B).

(1) Restoration. If a re-employed Participant repays his/her Cash-Out Distribution, the Plan Administrator, subject to the conditions of this Section 5.04(B), must restore the Participant's Account Balance to the same dollar amount as the dollar amount of his/her Account Balance on the Accounting Date, or other Valuation Date, immediately preceding the date of the Cash-Out Distribution, unadjusted for any Earnings occurring subsequent to that Accounting Date (and prior to the Participant's repayment or the Employer's restoration) or other Valuation Date.

(2) Source of repayment. A re-employed Participant may make repayment from any source, including an IRA Rollover Contribution, permissible under Applicable Law.

(3) No restoration. The Plan Administrator will not restore a re-employed Participant's Account Balance under this Section 5.04 (B) if:

(a) 5 Years. 5 years have elapsed since the Participant's first re-employment date with the Employer following the Cash-Out Distribution;

(b) Not employed. The Employer does not employ the Participant on the date the Participant repays his/her Cash-Out Distribution; or

(c) Forfeiture Break. The Participant has incurred a Forfeiture Break in Service. This condition also applies if the Participant makes repayment within the Plan Year in which he/she incurs the Forfeiture Break in Service and that Forfeiture Break in Service would result in a complete forfeiture of the amount the Plan Administrator otherwise would restore.

(4) Restoration timing. If none of the conditions in Section 5.04(B)(3) preventing restoration of the Participant's Account Balance apply, the Plan Administrator will restore the Participant's Account Balance as of the Plan Year Accounting Date coincident with or immediately following the repayment.

(5) Source of restoration. To restore the Participant's Account Balance, the Plan Administrator, to the extent necessary, will allocate to the Participant's Account:

(a) Forfeitures. First, from the amount, if any, of Participant forfeitures the Plan Administrator otherwise would allocate in that Plan Year under Section 3.07;

(b) Earnings. Second, from the amount, if any, of the Earnings for the Plan Year, except to the extent Earnings are allocable to specific Participant-Directed Accounts under Section 7.04(A)(2)(b); and

(c) Employer Contribution. Third, from the amount of a discretionary Employer Contribution for the Plan Year.

The Employer in Appendix B may eliminate as a source of restoration any of the amounts described in clauses (a), (b), and (c) or may change the order of priority of these amounts.

(6) Multiple restorations. If, for a particular Plan Year, the Plan Administrator must restore the Account Balance of more than one re-employed Participant, the Plan Administrator will make the restoration allocations from the amounts described in Section 5.04(B)(5), clauses (a), (b) and (c) to each such Participant's Account in the same proportion that a Participant's restored amount for the Plan Year bears to the restored amount for the Plan Year of all re-employed Participants.

(7) Employer must make-up shortfall. To the extent the amounts described in Section 5.04(B)(5) are insufficient to enable the Plan Administrator to make the required restoration, the Employer must contribute, without regard to any requirement or condition of Article III, the additional amount necessary to enable the Plan Administrator to make the required restoration.

(8) Not an Annual Addition. A cash-out restoration allocation is not an Annual Addition under Article IV.

(C) Deemed Cash-Out of 0% Vested Participant. Except as the Employer may elect in Appendix B, the "deemed cash-out rule" of this Section 5.04(C) applies to any 0% Vested Participant. Under a deemed cash-out, a Participant does not receive an actual Plan distribution but the Plan Administrator treats the Participant as having received an actual Cash-Out Distribution. A Participant is not 0% Vested if, at the time that the Plan Administrator applies the deemed cash-out rule: (i) the Participant has any existing Account Balance attributable to Elective Deferrals, Employee Contributions, Safe Harbor Contributions, Prevailing Wage Contributions (unless the Prevailing Wage Contributions are not immediately Vested), QNECs, QMACs or DEC; or (ii) the Participant has any vesting in accordance with the vesting schedule applicable to any other Contribution Type, even if the Participant has a zero

balance in that Account. A Participant is 0% Vested if the Participant is eligible to make or to receive any of the contributions described in clause (i) above, but has not made or received such contributions and if the Participant has no vesting as to Contribution Types described in clause (ii) above.

(1) If not entitled to allocation. If a 0% Vested Participant's Account is not entitled to an allocation of Employer Contributions for the Plan Year in which the Participant has a Severance from Employment, the Plan Administrator will apply the deemed cash-out rule as if the 0% Vested Participant received a Cash-Out Distribution on the date of the Participant's Severance from Employment.

(2) If entitled to allocation. If a 0% Vested Participant's Account is entitled to an allocation of Employer contributions or Participant forfeitures for the Plan Year in which the Participant has a Severance from Employment, the Plan Administrator will apply the deemed cash-out rule as if the 0% Vested Participant received a Cash-Out Distribution on the first day of the first Plan Year beginning after his/her Severance from Employment.

(3) Timing of "deemed repayment." For purposes of applying the restoration provisions of this Section 5.04, the Plan Administrator will treat a re-employed 0% Vested Participant as repaying his/her cash-out "distribution" on the date of the Participant's re-employment with the Employer.

(4) Pension plans. If the Plan is a Money Purchase Pension Plan or a Target Benefit Plan, all references in this Section 5.04(C) to "Severance from Employment" mean "Separation from Service."

(D) Accounting for Cash-Out Repayment.

(1) Pending restoration. As soon as is administratively practicable, the Plan Administrator will credit to the Participant's Account the Cash-Out Distribution amount a Participant has repaid to the Plan. Pending the restoration of the Participant's Account Balance, the Plan Administrator under Section 7.04(A)(2)(c) may direct the Trustee to place the Participant's Cash-Out Distribution repayment in a Segregated Account.

(2) Accounting by contribution source. The Plan Administrator will account for a Participant's restored balance by treating the Account as consisting of the same Contribution Types and amounts as existed on the date of the Cash-Out Distribution. The Employer in Appendix B may elect an alternative accounting for a restored Account, either under the "nonelective rule" or under the "rollover rule." Under the nonelective rule, the Plan Administrator will treat the portion of the Participant's restored balance attributable to the Participant's cash-out repayment as a Nonelective Contribution (or other Employer Contributions as applicable) for purposes of any subsequent distribution. Under the rollover rule, the Plan Administrator will treat the portion of the Participant's restored balance attributable to the Participant's cash-out repayment as a Rollover Contribution for purposes of any subsequent distribution; provided however that if the cash-out repayment does not

qualify as a Rollover Contribution or if the Plan does not permit Rollover Contributions, the Plan Administrator will apply the nonelective rule. Under either the nonelective rule or the rollover rule, the portion of the Participant's restored balance attributable to the Plan Administrator's restoration under Section 5.04(B)(1), consists of the same Contribution Types and amounts as existed as of the date of the Cash-out Distribution.

(3) **Return if failed repayment.** Unless the cash-out repayment qualifies as a Participant Rollover Contribution, the Plan Administrator will direct the Trustee to repay to the Participant as soon as is administratively practicable, the full amount of the Participant's Cash-Out Distribution repayment if the Plan Administrator determines any of the conditions of Section 5.04(B)(3) prevents restoration as of the applicable Accounting Date, notwithstanding the Participant's repayment.

5.05 YEAR OF SERVICE — VESTING.

(A) **Definition of Year of Service.** A Year of Service, for purposes of determining a Participant's vesting under Section 5.03, means the Vesting Computation Period during which an Employee completes the number of Hours of Service (not exceeding 1,000) the Employer specifies in its Adoption Agreement, without regard to whether the Employer continues to employ the Employee during the entire Vesting Computation Period.

(B) **Definition of Vesting Computation Period.** A Vesting Computation Period is a 12-consecutive month period the Employer elects in its Adoption Agreement.

(C) **Counting Years of Service.** For purposes of a Participant's vesting in the Plan, the Plan counts all of an Employee's Years of Service except:

(1) **Forfeiture Break in Service; Cash-Out.** For the sole purpose of determining a Participant's Vested percentage of his/her Account Balance derived from Employer Contributions which accrued for his/her benefit prior to a Forfeiture Break in Service or receipt of a Cash-Out Distribution, the Plan disregards any Year of Service after the Participant first incurs a Forfeiture Break in Service or receives a Cash-Out Distribution (except where the Plan Administrator restores the Participant's Account under Section 5.04(B)).

(2) **Rule of parity and one-year hold-out rule.** If the rule of parity under Section 5.06(C) or the one-year hold-out rule under Section 5.06(D) applies, the Plan disregards pre-break Service as described therein.

(3) **Other exclusions.** Consistent with Code §411(a)(4), any Year of Service the Employer elects to exclude under its Adoption Agreement, including Service during any period for which the Employer did not maintain the Plan or a Predecessor Plan. See Section 1.44(B).

(D) **Elapsed Time.** If the Employer in its Adoption Agreement elects to apply the Elapsed Time Method in applying the Plan's vesting schedule, the Plan Administrator will credit Service in accordance with Section 1.31(A)(3).

5.06 BREAK IN SERVICE AND FORFEITURE BREAK IN SERVICE — VESTING.

(A) **Definition of Break in Service.** For purposes of this Article V, a Participant incurs a Break in Service if during any Vesting Computation Period he/she does not complete more than 500 Hours of Service. If the Plan applies the Elapsed Time Method of crediting Service, a Participant incurs a Break in Service if the Participant has a Period of Severance of at least 12 consecutive months. If, pursuant to Section 5.05(A), the Plan does not require more than 500 Hours of Service to receive credit for a Year of Service, a Participant incurs a Break in Service in a Vesting Computation Period in which he/she fails to complete a Year of Service.

(B) **Definition of Forfeiture Break in Service.** A Participant incurs a Forfeiture Break in Service when he/she incurs 5 consecutive Breaks in Service.

(C) **Rule of Parity-Vesting.** The Employer in its Adoption Agreement may elect to apply the "rule of parity" under Code §411(a)(6)(D) for purposes of determining vesting Years of Service. Under the rule of parity, the Plan Administrator excludes a Participant's Years of Service before a Break in Service if: (1) the number of the Participant's consecutive Breaks in Service equals or exceeds 5; and (2) the Participant is 0% Vested in his/her Account Balance at the time he/she has the Breaks in Service. A Participant is not 0% Vested if at the time that the Plan Administrator applies the rule of parity the Participant is not 0% vested as described in Section 5.04(C).

(D) **One-Year Hold-out Rule-Vesting.** The "one-year hold-out rule" under Code §411(a)(6)(B) will not apply to this Article V unless the Employer elects otherwise, in Appendix B. If the one-year hold-out rule applies, an Employee who has a one-year Break in Service will not be credited for vesting purposes with any Years of Service earned before such one-year Break in Service, until the Employee has completed a Year of Service after the one-year Break in Service.

5.07 FORFEITURE OCCURS.

(A) **Timing.** A Participant's forfeiture of his/her non-Vested Account Balance derived from Employer Contributions occurs under the Plan on the earlier of:

(1) **Forfeiture Break.** The last day of the Vesting Computation Period in which the Participant first incurs a Forfeiture Break in Service; or

(2) **Cash-Out.** The date the Participant receives a Cash-Out Distribution.

(B) **Vesting Schedule/Plan Correction/Lost Participants.** The Plan Administrator determines the percentage of a Participant's Account Balance forfeiture, if any, under this Section 5.07 solely by reference to the vesting schedule the Employer elected in its Adoption Agreement. A Participant does not forfeit any portion of his/her Account Balance for any other reason or cause except as expressly provided by this Section 5.07 or as provided under Sections 3.07 or 7.07.

5.08 AMENDMENT TO VESTING SCHEDULE. The Employer under Section 11.02 may amend the Plan's vesting schedule(s) under Section 5.03 at any time, subject to this Section 5.08. For purposes of this Section 5.08, an amendment to the vesting schedule includes any Plan amendment which directly or indirectly affects the computation of the Vested percentage of a Participant's Account Balance. In addition, any shift in the Plan's vesting schedule under Article X, due to a change in the Plan's top-heavy status, is an amendment to the vesting schedule for purposes of this Section 5.08.

(A) No Reduction. The Plan Administrator will not apply the amended vesting schedule to reduce any Participant's existing Vested percentage (determined on the later of the date the Employer adopts the amendment, or the date the amendment becomes effective) in the Participant's existing and future Account Balance attributable to Employer Contributions, to a percentage less than the Vested percentage computed under the Plan without regard to the amendment.

(B) Hour of Service Required. Except as the Plan otherwise expressly provides, an amended vesting schedule will apply to a Participant only if the Participant receives credit for at least one Hour of Service after the new vesting schedule becomes effective.

(C) Election. If the Employer amends the Plan's vesting schedule, each Participant having completed at least 3 Years of Service (as described in Section 5.05) with the Employer prior to the expiration of the election period described below, may elect irrevocably to have the Plan Administrator determine the Vested percentage of his/her Account Balance without regard to the amendment.

(1) Notice of amendment. The Plan Administrator will forward an appropriate notice of any amendment to the vesting schedule to each affected Participant, together with the appropriate form upon which the Participant may make an election to remain under the pre-amendment vesting schedule and notice of the time within which the Participant must make an election to remain under the pre-amendment vesting schedule.

(2) Election timing. The Participant must file his/her election with the Plan Administrator within 60 days of the latest of: (a) the Employer's adoption of the amendment; (b) the effective date of the amendment; or (c) the Participant's receipt of a notice of the amendment.

(3) No election if no adverse effect. The election described in this Section 5.08(C) does not apply to a Participant if the amended vesting schedule provides for vesting at least as rapid at any time as the vesting schedule in effect prior to the amendment.

**ARTICLE VI
DISTRIBUTIONS**

6.01 TIMING OF DISTRIBUTION. The Plan Administrator will direct the Trustee to commence distribution of a Participant's Vested Account Balance in accordance with this Section 6.01 upon the Participant's Separation from Service (or Severance from Employment) for any reason, upon the Participant's death, or if the Participant exercises an In-Service Distribution right under the Plan. The Trustee may make Plan distributions on any administratively practical date during the Plan Year, consistent with the Employer's elections in its Adoption Agreement. For purposes of this Article VI, the Plan applies Severance from Employment in place of Separation from Service where distribution is of Restricted 401(k) Accounts. Section 6.01(A) is controlling as to distribution of all Accounts upon Separation from Service or Severance from Employment. Section 6.01(B) is controlling as to distribution of all Accounts upon death (whether death occurs before or after Separation from Service or Severance from Employment). Section 6.01(C) applies only while a Participant remains employed by the Employer and only to such Accounts described in the Plan and as the Employer elects in its Adoption Agreement.

(A) Distribution upon Separation from Service/Severance from Employment (other than death).

(1) Mandatory Distributions. The Employer in its Adoption Agreement will elect whether the Plan will make Mandatory Distributions and will elect the timing of the Mandatory Distribution. If the Employer elects no Mandatory Distributions, then all distributions require consent under Section 6.01(A)(2). The timing of any Mandatory Distribution must comply with Code §401(a)(14).

(a) Definition of Mandatory Distribution. A Mandatory Distribution is a Plan required distribution without the Participant's consent upon the Participant's Separation from Service. A Mandatory Distribution does not include a distribution based on the Participant's death or on account of Plan termination.

(i) Distribution after 62/NRA; unlimited amount. A Mandatory Distribution in the case of a Participant who will receive the distribution after the Participant attains the later of age 62 or Normal Retirement Age includes a distribution of any amount.

(ii) Distribution before 62/NRA; amount limit and Rollovers. A Mandatory Distribution in the case of a Participant who will receive the distribution before the Participant attains the later of age 62 or Normal Retirement Age may not exceed the amount (not exceeding \$5,000) the Employer elects in its Adoption Agreement. In applying the elected Mandatory Distribution amount, the Plan Administrator will include or exclude a Participant's Rollover Contributions Account as the Employer elects in its Adoption Agreement. The Plan Administrator will disregard accumulated DEC's.

(iii) Remaining Installments. A Mandatory Distribution does not include the remaining balance of any Installment distribution (originally subject to Participant consent), but where the remaining Account Balance presently is less than the Mandatory Distribution amount.

(b) Distribution of Mandatory Distribution before 62/NRA; method and timing. If a Participant will receive a Mandatory Distribution before attaining the later of age 62 or Normal Retirement Age, the Plan Administrator will direct the Trustee to distribute the Mandatory Distribution to the Participant in a Lump-Sum (without regard to Section 6.04) consisting of the Participant's entire Vested Account Balance (including any Rollover Contribution Account even if the Plan disregards a Rollover Contribution Account in determining Mandatory Distribution status). The Plan Administrator will direct the Trustee to make a Mandatory Distribution at the time the Employer elects in its Adoption Agreement, but in no event later than the 60th day following the close of the Plan Year in which the Participant attains Normal Retirement Age or age 65 if earlier. See Section 6.08(D) regarding potential Automatic Rollover of Mandatory Distributions. The Plan Administrator, in accordance with Section 6.08(B) will give a rollover notice to a Participant who will receive a Mandatory Distribution. The notice will explain the Automatic Rollover under Section 6.08(D) as applicable in the case of the Participant's failure to respond timely to the rollover notice.

(c) Distribution of Mandatory Distribution if 62/NRA; method and timing.

(i) Balance not exceeding \$5,000. If a Participant will receive a Mandatory Distribution after attaining the later of age 62 or Normal Retirement Age, and the Participant's Vested Account Balance (including any Rollover Contributions Account) does not exceed \$5,000 (or such lesser amount the Employer elects in Appendix B), the Plan Administrator will direct the Trustee to distribute a Mandatory Distribution to the Participant in a Lump-Sum (without regard to Section 6.04) consisting of the Participant's entire Vested Account Balance. The Plan Administrator will direct the Trustee to make a Mandatory Distribution at the time the Employer elects in its Adoption Agreement, but not later than the 60th day following the close of the Plan Year in which the Participant incurs a Separation from Service.

(ii) Balance exceeds \$5,000. If a Participant will receive a Mandatory Distribution after attaining the later of age 62 or Normal Retirement Age, and the Participant's Vested Account Balance (including any Rollover Contributions Account) exceeds \$5,000 (or such lesser amount the Employer elects in Appendix B), the Participant may elect any method or form of distribution available under the Plan and the Plan Administrator in accordance with Section 6.01(A)(2)(c) will provide the Participant with a distribution notice. If under Section 6.01(A)(2)(f) the Plan permits a Participant receiving a

Distribution Requiring Consent to postpone distribution to any specified date (not beyond the Participant's DCD as described in Section 6.02), a Participant receiving a Mandatory Distribution under this Section 6.01(A)(1)(c) (ii) also may elect to postpone distribution. If a Participant may not elect to postpone distribution or fails to elect to postpone distribution, the Plan Administrator will direct the Trustee to distribute the Participant's Account at the time the Employer elects in its Adoption Agreement, but not later than the 60th day following the close of the Plan Year in which the Participant incurs a Separation from Service.

(iii) **Rollover notice but no Automatic Rollover.** The Plan Administrator, in accordance with Section 6.08(B) will give a rollover notice to a Participant who will receive a Mandatory Distribution under this Section 6.01(A)(1)(c). However, the Automatic Rollover under Section 6.08(D), in the case of the Participant's failure to respond timely to the rollover notice, does not apply under this Section 6.01(A)(1)(c).

(2) Distributions Requiring Consent.

(a) **Definition of Distribution Requiring Consent.** A Distribution Requiring Consent is a distribution upon the Participant's Separation from Service other than on account of death and which is not a Mandatory Distribution,

(b) **Distribution of Distribution Requiring Consent.** The Plan Administrator, subject to this Section 6.01(A)(2) regarding Participant elections or the absence thereof, will direct the Trustee to commence or make a Distribution Requiring Consent, at the time or times and in the form the Adoption Agreement specifies.

(c) **Distribution notice.** At least 30 days and not more than 90 days prior to the Participant's Annuity Starting Date, the Plan Administrator must provide a written distribution notice (or a summary notice as permitted under Treasury regulations) to a Participant who is eligible to receive a Distribution Requiring Consent. The distribution notice must explain the optional forms of benefit in the Plan, including the material features and relative values of those options, and the Participant's right to postpone distribution until the applicable date described in Section 6.01(A)(2)(f). Also see Section 6.08(B) for provisions relating to a rollover notice.

(d) **Consent requirements.** A Participant must consent, in writing, following receipt of the distribution notice, to any Distribution Requiring Consent. The Participant's spouse also must consent, in writing, to any distribution, for which Section 6.04 requires the spouse's consent. The consent requirements of this Section 6.01(A)(2)(d) do not apply to defaulted loans described in Section 7.06(B), to RMDs under Section 6.02 or to corrective distributions under Article IV. See Section 11.05(D) as to consent requirements related to distributions following Plan termination.

(e) **Distribution election/reconsideration.** A Participant eligible to receive a Distribution Requiring Consent, consistent with the Adoption Agreement and subject to Sections 6.02, 6.03 and 6.04, may elect the time

and method of distribution of his/her Account (or portion thereof) following receipt of the distribution notice. Unless the Plan Administrator in a distribution form, notice, or other Plan disclosure indicates otherwise, a Participant may reconsider his/her distribution election at any time prior to the Annuity Starting Date and may elect to commence distribution as of any other distribution date permitted under the Plan or under the Adoption Agreement. A Participant may elect to receive a distribution at any administratively practical time which is earlier than 30 days following the Participant's receipt of the distribution notice, by waiving in writing the balance of the 30 days. However, if the requirements of Section 6.04 apply, the Participant may not elect to commence distribution during the 7 days immediately following the date of the Participant's receipt of the distribution notice.

(f) **Election to postpone.** A Participant eligible to receive a Distribution Requiring Consent prior to his/her Annuity Starting Date, may elect to postpone distribution beyond the time the Employer has elected in its Adoption Agreement, to any specified date including, but not beyond the Participant's RBD as described in Section 6.02, unless the Employer, in its Adoption Agreement, specifically limits a Participant's right to postpone distribution of his/her Account Balance only to the later of the date the Participant attains age 62 or Normal Retirement Age. The Plan Administrator will reapply the notice and consent requirements of Section 6.01(A)(2) to any distribution a Participant postpones under this Section 6.01(A)(2)(f).

(g) **No election/deemed elected distribution date.** In the absence of a Participant's consent and distribution election (as described in Sections 6.01(A)(2)(d) and (e)) or in the absence of the Participant's election under Section 6.01(A)(2)(f), made prior to his/her Annuity Starting Date, to postpone distribution, the Plan Administrator, consistent with the Employer's elections in its Adoption Agreement, will treat the Participant as having elected (in accordance with the Treasury Regulations under Code §§411 and 401(a)(14)) to postpone his/her distribution until the later of the date the Participant attains age 62 or Normal Retirement Age. At the applicable date, the Plan Administrator then will direct the Trustee to distribute the Participant's Vested Account Balance in a Lump-Sum (or, if applicable, the annuity form of distribution required under Section 6.04). The provisions Section 6.01(A)(2)(e) regarding reconsideration of distribution elections apply to any election or deemed election in this Section 6.01(A)(2)(g).

(h) **Definition of Annuity Starting Date.** See Section 1.06(A).

(3) **Disability.** If the Participant's Separation from Service is because of his/her Disability, except to the extent the Employer elects in its Adoption Agreement to accelerate distribution, the Plan Administrator will direct the Trustee to distribute the Participant's Vested Account Balance at the same time and in the same form as if the Participant had incurred a Separation from Service without Disability.

(4) Determination of Vested Account Balance. For purposes of the consent requirements under this Article VI and of determining whether a distribution is a Mandatory Distribution, the Plan Administrator determines a Participant's Vested Account Balance as of the most recent Valuation Date immediately prior to the distribution date, and takes into account the Participant's entire Account Balance, including Elective Deferrals, but including or excluding the Participant's Rollover Contributions Account as the Employer elects in its Adoption Agreement. The Plan Administrator in determining the Participant's Vested Account Balance at the relevant time, will disregard a Participant's Vested Account Balance existing on any prior date, except as related to Installment distributions under Section 6.01(A)(1)(a)(iii).

(5) Consent to cash-out/forfeiture. If a Participant is partially Vested in his/her Account Balance, a Participant's election under Section 6.01(A)(2) to receive distribution prior to the Participant's incurring a Forfeiture Break in Service, must be in the form of a Cash-Out Distribution.

(6) Return to employment. A Participant may not receive a distribution based on Separation from Service, or continue any Installment distribution based on a prior Separation from Service, if, prior to the time the Trustee actually makes the distribution, the Participant returns to employment with the Employer.

(B) Distribution upon Death. In the event of the Participant's death (whether death occurs before or after Separation from Service or Severance from Employment), the Plan Administrator will direct the Trustee, in accordance with this Section 6.01(B) to distribute to the Participant's Beneficiary the Participant's Vested Account Balance remaining in the Trust at the time of the Participant's death.

(1) Timing of commencement. The Plan Administrator must direct the Trustee to distribute or commence distribution of the deceased Participant's Vested Account Balance following the date on which the Plan Administrator receives notification of, or otherwise confirms, the Participant's death. The actual timing of distribution will be in accordance with: (a) the Employer's Adoption Agreement elections; (b) any Participant or Beneficiary permitted and timely made election under Section 6.03(B); and (c) the Plan terms including Section 6.02.

(2) Distribution method. The Plan Administrator must direct the Trustee to distribute or commence distribution of the deceased Participant's Vested Account Balance under a method which is in accordance with: (a) the Employer's Adoption Agreement elections; (b) any Participant or Beneficiary permitted and timely made election under Section 6.03(B); and (c) the Plan terms including Section 6.04.

(C) In-Service Distribution. The Employer in its Adoption Agreement must elect the Participants' In-Service Distribution rights, if any. If the Employer elects to permit any In-Service Distributions, the Employer will elect the eligible Contribution Type or Contribution Type Accounts and the age or other events which entitle a Participant to an In-Service Distribution. The Employer's elections under

this Section 6.01(C) are subject to the restrictions of Section 6.01(C)(4) and any other restrictions under Applicable Law.

(1) Definition of In-Service Distribution. An In-Service distribution means distribution of a Participant's Account or any portion thereof prior to his/her Separation from Service.

(2) Conditions.

(a) Vesting. The Employer must elect in its Adoption Agreement whether a partially-Vested Participant may receive an In-Service Distribution. If a Participant receives an In-Service Distribution as to a partially-Vested Account, and the Participant has not incurred a Forfeiture Break in Service, the Plan Administrator will apply the vesting provisions of Section 5.03(C).

(b) Other Conditions. The Employer in its Adoption Agreement may elect other conditions applicable to In-Service Distributions as are not inconsistent with Applicable Law.

(3) Administration.

(a) Participant election. A Participant must make any permitted In-Service Distribution election under this Section 6.01(C) in writing and on a form prescribed by the Plan Administrator which specifies the percentage or dollar amount of the distribution and the Participant's Contribution Type or Account to which the election applies.

(b) Frequency, timing and method. If the Plan permits In-Service Distributions: (i) the Plan Administrator may adopt a policy imposing frequency limitations or other reasonable administrative conditions; and (ii) a Participant may elect as many In-Service Distributions per Plan Year as the election form prescribed by the Plan Administrator allows, or as any In-Service Distribution policy permits, with a minimum of one In-Service Distribution permitted each Plan Year. If the Plan Administrator's form or policy does not specify the permitted number of Plan Year In-Service Distributions, the number is not limited. The Trustee, as directed by the Plan Administrator and subject to Section 6.04, will distribute the amount(s) a Participant elects in a single distribution, as soon as administratively practical after the Participant files his/her properly completed In-Service Distribution election with the Plan Administrator. The Trustee will distribute the Participant's remaining Account Balance in accordance with the other provisions of this Article VI.

(4) Account restrictions.

(a) Nonelective, Regular Matching, Additional Matching and SIMPLE Contribution distribution events. The Employer in its Adoption Agreement may elect to permit an In-Service Distribution of the Nonelective, Regular Matching, Additional Matching and SIMPLE Contribution Accounts upon a Participant's attainment of a stated age, based on a fixed number of years or based upon some other specified event, such as hardship under Section 6.07. Such Adoption Agreement elections include, but are not limited to, the following:

(i) **Two year “seasoned” contributions.** The contributions which the Plan Administrator will distribute were made at least 2 years (or such other greater period as the Employer elects in its Adoption Agreement) prior to the date on which the distribution will occur. Such distributions may include Earnings on the “seasoned” contributions.

(ii) **60 months of participation.** The Participant has been a Participant for at least 60 months (or for such other greater period as the Employer elects in its Adoption Agreement) prior to the date on which the Plan Administrator will make the distribution. This election applies to all applicable contributions, regardless of when made.

(b) 401(k) Plans.

(i) **Limitation.** A Participant may not receive a distribution of the Participant’s Restricted 401(k) Accounts except in the event of the Participant’s death, Disability, Severance from Employment, attainment of age 59 1/2, hardship in accordance with Section 6.07 or Plan termination (as limited under Section 11.05(F)).

(ii) **Definition of Restricted 401(k) Accounts.** A Participant’s Restricted 401(k) Accounts are the Participant’s Elective Deferral Account, QNEC Account, QMAC Account and Safe Harbor Contributions Account.

(c) Money Purchase Pension/Target Benefit Plans.

(i) **Limitation.** A Participant may not receive an In-Service Distribution of a Participant’s Restricted Pension Accounts except in the event of the Participant’s attainment of Normal Retirement Age (or any later age), the Participant’s Disability or Plan termination under Section 11.05.

(ii) **Definition of Restricted Pension Accounts.** A Participant’s Restricted Pension Accounts are the Participant’s Money Purchase Pension Plan or Target Benefit Plan Accounts.

(d) **Prevailing Wage Contributions.** For purposes of In-Service Distributions, a Participant’s Prevailing Wage Contribution Account is treated as a Nonelective or other Employer Contribution Account as applicable, unless the Prevailing Wage Contract provides for other In-Service Distribution rights. However, if the Employer in its Adoption Agreement elects to offset other Contribution Types with the Prevailing Wage Contribution, for purposes of In-Service Distributions, the Plan Administrator will treat that portion of the Prevailing Wage Contribution Account which offsets another Contribution Type, as the other Contribution Type.

(e) **Rollover Contributions, Employee Contributions and DECs.** A Participant may elect to receive an In-Service Distribution of his/her Accounts

attributable to Rollover Contributions, Employee Contributions and DECs at any time subject to Section 6.01(C) (3). Distribution of a Rollover Contribution is subject to Section 6.04 if Section 6.04 otherwise applies to the Participant.

(f) Transferred amounts/distribution restrictions and Protected Benefits.

(i) **Distribution restrictions: transfers from pension plans to non-pension plans.** Except in the case of certain Elective Transfers, if this Plan is a Profit Sharing Plan or a 401(k) Plan, the Plan, except in accordance with Section 6.01(C)(4)(c), may not make any In-Service Distribution to the Participant of his/her Restricted Pension Accounts (including post-transfer Earnings on those Accounts) previously transferred, within the meaning of Code §414(l), to this Plan from a Money Purchase Pension Plan or from a Target Benefit Plan. This limitation applies only to such transferred balances consisting of Restricted Pension Accounts.

(ii) **Distribution restrictions: transfers from 401(k) Plans to other plans.** Except in the case of certain Elective Transfers, if this Plan is a Profit Sharing Plan, Money Purchase Pension Plan or a Target Benefit Plan, the Plan, except in accordance with Section 6.01(C)(4)(b), may not make any In-Service Distribution to the Participant of his/her Restricted 401(k) Accounts (including post-transfer Earnings on those Accounts) previously transferred, within the meaning of Code §414(l), to this Plan from a 401(k) Plan. This limitation applies only to such transferred balances consisting of Restricted 401(k) Accounts.

(iii) **Protected Benefit/Separate Accounting.** See Section 11.06 regarding preservation of Protected Benefits with regard to transferred amounts. The Plan Administrator must apply proper separate accounting of transferred amounts to comply with this Section 6.01(C)(4)(f).

(g) **Designated IRA.** A Participant may request and receive distribution of his/her Designated IRA Account at any time, subject the requirements of Code §401(a)(9) and the regulations thereunder as applicable to IRAs. Section 6.04 does not apply to Designated IRA Contributions.

(5) **Hardship.** See Section 6.07 regarding requirements for In-Service Distributions and for post-Separation from Service or Severance from Employment distribution accelerations, based on hardship.

6.02 REQUIRED MINIMUM DISTRIBUTIONS.

(A) Lifetime RMDs.

(1) **RBD.** The Plan Administrator will direct the Trustee to distribute or to commence distribution to the Participant of the Participant’s entire Vested Account Balance no later than the Participant’s RBD.

(2) **Amount of RMD for each DCY.** During the Participant's lifetime, the RMD that will be distributed for each DCY is the lesser of:

(a) **ULT amount.** The quotient obtained by dividing the Participant's RMD Account Balance by the distribution period in the ULT, using the Participant's age as of the Participant's birthday in the DCY; or

(b) **SLT/younger spouse.** If the Participant's sole Designated Beneficiary for the DCY is the Participant's spouse who is more than 10 years younger than the Participant, the quotient obtained by dividing the Participant's RMD Account Balance by the distribution period in the JLT using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the DCY.

(3) **Lifetime RMDs continue through year of Participant's death.** RMDs will be determined under this Section 6.02(A) beginning with the first DCY and up to and including the DCY that includes the Participant's date of death or until the Participant's Vested Account Balance is completely distributed.

(B) Death RMDs.

(1) **Death of Participant before DCD.** If the Participant dies before the DCD, the Plan Administrator will direct the Trustee to distribute or commence distribution to the Participant of the Participant's Vested Accrued Benefit no later than as follows:

(a) **Spouse sole Designated Beneficiary.** Except as otherwise provided in Section 6.02(B)(1)(e), 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 1/2, if later.

(i) **Death of spouse.** If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse are required to begin, then this Section 6.02(B)(1) (other than Section 6.02(B)(1)(a)) will apply as if the surviving spouse were the Participant.

(b) **Other Designated Beneficiary.** Except as otherwise provided in Section 6.02(B)(1)(e), 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) **No Designated Beneficiary/"5-year rule."** If there is no Designated Beneficiary as of September 30 of the year following the calendar 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) **Participant survived by Designated Beneficiary/"Life Expectancy rule."** If there is a Designated Beneficiary, the RMD for each DCY after the year of the Participant's death is the quotient obtained by dividing the Participant's RMD Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Section 6.02(B)(2)(a).

(e) **5-year or Life Expectancy rule; possible election.** The Employer in its Adoption Agreement will elect whether distribution of the Participant's Account in the case of death before the DCD will be made in accordance with the Life Expectancy rule under Section 6.02(B)(1)(d) or the 5-year rule under Section 6.02(B)(1)(c). The Employer's election may permit a Designated Beneficiary to elect which of these rules will apply or may specify which rule applies. However, the Life Expectancy rule (whether subject to election or not) applies only in the case of a Designated Beneficiary. The 5-year rule applies as to any Beneficiary who is not a Designated Beneficiary. A permitted election under this Section 6.02(B)(1)(e) must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 6.02(B)(1), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. In the absence of a timely election, the Life Expectancy rule applies unless the Employer in Appendix B elects to apply the 5-year rule.

(2) **Death on or after DCD.** This Section 6.02(B)(2) applies if the Participant dies on or after his/her DCD.

(a) **Participant survived by Designated Beneficiary.** If there is a Designated Beneficiary, the RMD for each DCY after the year of the Participant's death is the quotient obtained by dividing the Participant's RMD Account Balance by the longer of the Participant's remaining Life Expectancy or the Designated Beneficiary's remaining Life Expectancy, determined as follows:

(i) **Participant's life expectancy.** 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) **Spouse as sole Designated Beneficiary.** 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 DCY after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For DCYs 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) **Non-Spouse Designated Beneficiary.** 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 there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the RMD for each DCY 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.

(C) Distribution Methods. Nothing in this Section 6.02 gives any Participant or any Beneficiary the right to receive a distribution of the Participant's Account under any method or at a time which the Plan does not permit. Unless the Participant's Vested Account Balance is distributed in the form of an annuity purchased from an insurance company or in a Lump Sum on or before the RBD, as of the first DCY, distributions will be made in accordance with Section 6.02(A) and (B), but subject to the Employer's Adoption Agreement elections regarding the method of distribution. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the applicable Treasury regulations. If the Adoption Agreement limits distributions to a Lump Sum, the Plan will distribute the Participant's entire Vested Account Balance in the form of a Lump Sum on or before the Participant's RBD, or if applicable, at the time determined in Section 6.02(B), but subject to the Employer's Adoption Agreement elections regarding timing of the distribution. See Section 6.03(B) regarding Participant and Beneficiary elections.

(D) Operating Rules.

(1) Precedence. The requirements of this Section 6.02 will take precedence over any inconsistent provisions of the Plan.

(2) Requirements of Treasury regulations incorporated. All distributions required under this Section 6.02 will be determined and made in accordance with the Treasury regulations under Code §401(a)(9) and the minimum distribution incidental benefit requirement of Code §401(a)(9)(G).

(3) TEFRA Section 242(b)(2) elections. Notwithstanding the other provisions of this Section 6.02, distributions may be made under Section 6.10.

(4) 2002 DCY election. This Section 6.02 applies to RMDs for the 2002 DCY unless the Employer in Appendix B elects that 2002 RMDs are to be determined in accordance with the RMD rules in effect under the 1987 or 2001 proposed Treasury regulations under Code §401(a)(9), in lieu of this Section 6.02. Any such election applies to the 2002 DCY only and the provisions of this Section 6.02 apply for DCYs beginning after 2002.

(E) Definitions. The following definitions apply to this Section 6.02.

(1) Designated Beneficiary. A "Designated Beneficiary" means an individual who is a Beneficiary under Section 7.05 and who is a designated beneficiary under Code §401(a)(9) of the Internal Revenue Code and Treas. Reg. §1.401(a)(9)-4, Q&As-4 and -5.

(2) DCY. A DCY is a distribution calendar year for which an RMD is required. For RMDs beginning before the Participant's death, the first DCY is the calendar year immediately preceding the calendar year which contains the Participant's RBD. For RMDs beginning after the Participant's death, the first DCY is the calendar year in which distributions are required to begin under Section 6.02(B). The RMD for the Participant's first DCY will be made on or before the Participant's RBD. The RMD for other DCYs, including the RMD for the DCY in which the Participant's RBD occurs, will be made on or before December 31 of that DCY.

(3) DCD. A DCD is a distribution commencement date and generally means the Participant's RBD. However, if Section 6.02(B)(1)(a)(i) applies, the DCD is the date distributions are required to begin to the surviving spouse under Section 6.02(B)(1)(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the otherwise applicable DCD, then the DCD is the date distributions actually commence.

(4) JLT. The JLT is the Joint and Last Survivor Table set forth in Treas. Reg. §1.401(a)(9)-9, Q/A-3.

(5) Life Expectancy. Life Expectancy refers to life expectancy as computed under the SLT.

(6) Participant's RMD Account Balance. A Participant's RMD Account Balance is the account balance as of the last Valuation Date in the VCY increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the VCY after the Valuation Date and decreased by distributions made in the VCY after the Valuation Date. The Account Balance for the VCY includes any amounts rolled over or transferred to the Plan either in the VCY or in the DCY if distributed or transferred in the VCY.

(7) RBD. A Participant's RBD is his/her required beginning date determined as follows:

(a) More than 5% owner. A Participant's RBD is the April 1 of the calendar year following the close of the calendar year in which the Participant attains age 70 1/2 if the Participant is a more than 5% owner (as defined in Code §416(i)(B)) as to the Plan Year ending in that calendar year. If a Participant is a more than 5% owner at the close of the relevant calendar year, the Participant may not discontinue RMDs notwithstanding the Participant's subsequent change in ownership status.

(b) Other Participants. If the Participant is not a more than 5% owner, his/her RBD is the April 1 of the calendar year following the close of the calendar year in which the Participant incurs a Separation from Service or, if later, the April 1 following the close of the calendar year in which the Participant attains age 70 1/2.

(c) **Election as to RBD.** The Employer in Appendix B may elect that the Plan Administrator continue to apply (indefinitely or to a specified date) the RBD definition in effect prior to 1997 ("pre-SBJPA RBD"). A Participant's pre-SBJPA RBD (if applicable) is April 1 following the close of the calendar year in which the Participant attains age 70 1/2.

(8) **RMD.** An RMD is the required minimum distribution the Plan must make to a Participant or Beneficiary for a DCY. The Plan Administrator determines an RMD without regard to vesting, but in accordance with Treas. Reg. §1.401(a)(9)-5, the Plan only will distribute an RMD to the extent that the amount distributed is Vested.

(9) **SLT.** The SLT is the Single Life Table set forth in Treas. Reg. §1.401(a)(9)-9, Q/A-1.

(10) **ULT.** The ULT is the Uniform Lifetime Table set forth in Treas. Reg. §1.401(a)(9)-9, Q/A-2.

(11) **VCY.** A VCY is a valuation calendar year, which is the calendar year immediately preceding a DCY.

6.03 POST-SEPARATION (SEVERANCE), LIFETIME RMD, AND BENEFICIARY DISTRIBUTION METHODS. Distribution of a Participant's Account: (i) after Separation from Service (or Severance from Employment); (ii) during employment but where the lifetime RMD requirements under Section 6.02(A) apply; and (iii) to a Beneficiary after the Participant's death, are subject to the distribution methods in this Section 6.03.

(A) Plan Available Methods.

(1) **Participant methods.** The Employer in its Adoption Agreement will elect one or more of the following distribution methods applicable to a Participant: (i) Lump-Sum; (ii) Installments; (iii) Installments but only if the Participant is required to receive RMDs under Section 6.02; (iv) Alternative Annuity; (v) Ad-Hoc; or (vi) any other method the Employer describes in its Adoption Agreement which is not inconsistent with Applicable Law. If Section 6.04 applies, the distribution must be a QJSA unless waived. In the event of a QJSA waiver, the distribution will be made under the alternative method the Participant elects, in accordance with this Section 6.03.

(2) **Beneficiary Methods.** The Employer in its Adoption Agreement will elect one or more of the following distribution methods applicable to a Beneficiary: (i) Lump-Sum; (ii) Installments, provided any Installment is in an amount at least equal to the RMD for a DCY; (iii) Ad-Hoc, provided the Beneficiary must receive a distribution in an amount at least equal to the RMD for a DCY; or (iv) QPSA if the Plan is subject to Section 6.04. Under a Plan subject to Section 6.04, a surviving spouse Beneficiary may elect to waive the QPSA in favor of another Beneficiary distribution method the Plan permits. See Section 6.04(B)(5). See Sections 6.02(B)(1)(e) and 6.02(C) as to distribution timing elections and elections relating to death of the Participant before the DCD.

(3) **Definition of Lump-Sum.** A Lump-Sum means a single payment and includes, but is not limited to, a "lump-sum distribution" under Code §402(d)(4). If the Employer in its Adoption Agreement elects to limit distributions to a Lump-Sum, all Plan distributions must be made in this form, including all RMDs under Section 6.02.

(4) **Definition of Installments.** Installments means payment in monthly, quarterly, semi-annual, annual or other installments over a fixed reasonable period of time, not exceeding the Life Expectancy of the Participant, or the joint life and last survivor expectancy of the Participant and his/her designated Beneficiary. To facilitate an Installment distribution the Plan Administrator under Section 7.04(A)(2)(c) may direct the Trustee to place all or any part of the Participant's Account Balance in a Segregated Account.

(a) **Installments only for Lifetime RMDs.** If the Employer in its Adoption Agreement elects Installments only if a Participant is subject to lifetime RMDs under Section 6.02(A), and does not elect Installments generally, only the affected Participants are entitled to an Installment distribution under the Plan. Any such Installment must satisfy Section 6.02(A).

(b) **Installment acceleration.** A Participant or Beneficiary receiving an Installment distribution may, at any time, elect to accelerate the payment of all, or any portion, of the Participant's unpaid Vested Account Balance.

(5) **Definition of Alternative Annuity.** An Alternative Annuity means distribution of an Annuity Contract which is not a QJSA or a QPSA. The Alternative Annuity must be based on the life of the Participant or upon the joint lives of the Participant and a Designated Beneficiary. The Employer in its Adoption Agreement will describe the material characteristics of any Alternative Annuity available under the Plan. If Section 6.04 does not apply to the overall Plan, the Employer will not elect an Alternative Annuity.

(6) **Definition of Ad-Hoc.** Ad-Hoc means the Participant or Beneficiary may at any time after Separation from Service (or Severance from Employment) elect distribution of all or any part of his/her Account or of specified Accounts under the Plan. The Plan Administrator may adopt a policy regarding Ad-Hoc distributions imposing a reasonable minimum distribution amount, frequency limitations or other reasonable administrative conditions.

(B) **Participant and Beneficiary Elections.** Subject to any contrary requirements imposed by Sections 6.01, 6.02, this Section 6.03 or 6.04, and also subject to Section 8.04 as to the form of distribution (cash or property), a Participant or Beneficiary may elect any method or timing of distribution the Plan permits.

(1) **Participant election as to Beneficiary.** The Participant, on a form prescribed by the Plan Administrator, may elect the distribution method which will apply to any Beneficiary, including his/her surviving spouse. The Participant's election may limit any Beneficiary's right to increase or to reduce the frequency or the amount of any payments.

(2) **If no election.** If a Participant or Beneficiary does not make a timely election as to the distribution method and timing as the Plan may permit, the Plan Administrator will direct the Trustee to distribute a Lump-Sum as soon as is practical and at the earliest date the Plan permits distribution but not later than the date the Plan requires distribution. If the Plan does not permit a Lump-Sum distribution, the Plan Administrator will direct distribution under any other method the Plan permits. If the Plan permits an election as to cash or property, in the absence of an election, the Plan Administrator will direct the Trustee to distribute cash, subject to Section 8.04.

(3) **Combination of methods.** If the Employer in its Adoption Agreement elects to permit more than one distribution method under this Section 6.03, a Participant or Beneficiary may elect any combination of the available methods either as to different Accounts or as to specified amounts subject to distribution.

(4) **No third party discretion.** No third party, including the Employer, the Plan Administrator and the Trustee, may exercise discretion over any Participant or Beneficiary election of the method of distribution, provided the election is made in accordance with the Plan.

(5) **Lump-Sum only if Account does not exceed \$5,000.** Any distribution elections permitted under this Section 6.03 are available only if the Participant's Vested Account Balance, as determined under Section 6.01(A) (4), exceeds \$5,000, unless the Employer elects to apply any lesser amount in Appendix B. If the Participant's Vested Account Balance does not exceed \$5,000 (or such lesser amount the Employer elects in Appendix B), the Trustee will distribute the balance in a Lump-Sum (which will be a Cash-Out Distribution if the Participant's Account Balance is not 100% Vested) without regard to Section 6.04.

(6) **Sourcing election.** If a Participant or Beneficiary who will receive a partial (non-corrective) distribution of his/her Plan Account has both a Roth Deferral Account (or some other Account with tax basis) and one or more pre-tax Accounts including a Pre-Tax Deferral Account, the Participant or Beneficiary may elect the Account source(s) and composition (contributions or Earnings) of the distribution unless such elections are contrary to Applicable Law. This Section 6.03(B)(6) as to election of Account sources from among multiple sources does not apply to the extent that a Participant or Beneficiary is eligible under the Plan terms to receive a distribution only from one specific Account source. In the absence of a Participant or Beneficiary election, the Plan Administrator operationally will determine the Account source(s) from which the Trustee will make the distribution and will determine whether such amounts distributed consist of the Account contributions or of Account Earnings or both, unless such Plan Administrator determinations are contrary to Applicable Law.

(7) **Application to alternate payees.** This Section 6.03 applies to an alternate payee in the same manner as if the alternate payee were the Participant. See Section 6.05

as to the right of a QDRO alternate payee to elect the distribution method applicable to the alternate payee's distribution.

(C) **Modification.** The Employer in its Adoption Agreement may elect to modify the methods of payment available under the Plan, consistent with this Section 6.03. If the Employer's Plan is a Restated Plan, the Employer in its Adoption Agreement and in accordance with Treas. Reg. §1.411(d)-4, may elect to eliminate from the prior Plan certain Protected Benefits.

6.04 ANNUITY DISTRIBUTIONS TO PARTICIPANTS AND TO SURVIVING SPOUSES.

(A) **Qualified Joint and Survivor Annuity (QJSA).** The Plan Administrator must direct the Trustee to distribute a married or unmarried Participant's Vested Account Balance in the form of a QJSA, unless the Participant, and spouse if the Participant is married, waive the QJSA in accordance with this Section 6.04(A) or unless Section 6.04(H) applies.

(1) **Definition of QJSA if married.** If, as of the Annuity Starting Date, the Participant is married (even if the Participant has not been married throughout the one year period ending on the Annuity Starting Date), a QJSA is an immediate Annuity Contract which is purchasable with the Participant's Vested Account Balance and which provides a Life Annuity for the Participant and a Survivor Annuity payable for the remaining life of the Participant's surviving spouse equal to 50% of the amount of the annuity payable during the life of the Participant.

(2) **Definition of QJSA if not married.** If, as of the Annuity Starting Date, the Participant is not married, a QJSA is an immediate Life Annuity Contract for the Participant which is purchasable with the Participant's Vested Account Balance.

(3) **Modification of QJSA benefit.** The Employer in Appendix B may elect a different percentage (more than 50% but not exceeding 100%) for the Survivor Annuity.

(4) **Definitions of Life/ Survivor Annuity.** A Life Annuity means an Annuity Contract payable to the Participant in equal installments for the life of the Participant that terminates upon the Participant's death. A Survivor Annuity means an Annuity Contract payable to the Participant's surviving spouse in equal installments for the life of the surviving spouse that terminates upon the death of the surviving spouse.

(5) **QJSA notice/timing.** A Participant may elect distribution of the QJSA at the earliest retirement age under the Plan, which is the earliest date on which the Participant could elect to receive retirement benefits. At least 30 days and not more than 90 days before the Participant's Annuity Starting Date, the Plan Administrator must provide the Participant a written explanation of the terms and conditions of the QJSA, the Participant's right to make, and the effect of, an election to waive the QJSA benefit, the rights of the Participant's spouse regarding the waiver election and the Participant's right to make, and the effect of, a revocation of a waiver election.

(6) Waiver frequency and timing. The Plan does not limit the number of times the Participant may revoke a waiver of the QJSA or make a new waiver during the election period. The Participant (and his/her spouse, if the Participant is married), may revoke an election to receive a particular form of benefit at any time until the Annuity Starting Date.

(7) Married Participant waiver. A married Participant's QJSA waiver election is not valid unless: (i) the Participant's spouse (to whom the Survivor Annuity is payable under the QJSA), after the Participant has received the QJSA notice, has consented in writing to the waiver election, the spouse's consent acknowledges the effect of the election, and a notary public or the Plan Administrator (or his/her representative) witnesses the spouse's consent; (ii) the spouse consents to the alternative method of payment designated by the Participant or to any change in that designated method of payment; and (iii) unless the spouse is the Participant's sole primary Beneficiary, the spouse consents to the Participant's Beneficiary designation or to any change in the Participant's Beneficiary designation.

(a) Effect of spousal consent/blanket waiver. The spouse's consent to a waiver of the QJSA is irrevocable, unless the Participant revokes the waiver election. The spouse may execute a blanket consent to the Participant's future payment form election or Beneficiary designation, if the spouse acknowledges the right to limit his/her consent to a specific designation but, in writing, waives that right.

(b) Spousal consent not required. The Plan Administrator will accept as valid a waiver election which does not satisfy the spousal consent requirements if the Plan Administrator establishes: (i) the Participant does not have a spouse; (ii) the spouse cannot be located; (iii) the Participant is legally separated or has been abandoned (within the meaning of applicable state law) and the Participant has a court order to that effect; or (iv) other circumstances exist under which Applicable Law excuses the spousal consent requirement. If the Participant's spouse is legally incompetent to give consent, the spouse's legal guardian (even if the guardian is the Participant) may give consent.

(B) Qualified Preretirement Survivor Annuity (QPSA). If a married Participant dies prior to his/her Annuity Starting Date, the Plan Administrator will direct the Trustee to distribute a portion of the Participant's Vested Account Balance to the Participant's surviving spouse in the form of a QPSA, unless the Participant has a valid waiver election in effect. The Employer in its Adoption Agreement will elect whether to apply the "one-year marriage rule." If the Employer elects to apply the one-year marriage rule, the QPSA benefit does not apply unless the Participant and his/her spouse were married throughout the one year period ending on the date of the Participant's death.

(1) Definition of QPSA. A QPSA is an Annuity Contract which is purchasable with 50% of the Participant's Vested Account Balance (determined as of the date of the Participant's death) and which is payable for the life of the Participant's surviving spouse.

(2) Modification of QPSA. The Employer in Appendix B may elect a different percentage (more than 50% but not exceeding 100%) for the QPSA.

(3) Ordering rule. The value of the QPSA is attributable to Employer Contributions, to Pre-Tax Deferrals, to Roth Deferrals, and to Employee Contributions in the same proportion as the Participant's Vested Account Balance is attributable to those contributions.

(4) Disposition of remaining balance. The portion of the Participant's Vested Account Balance not payable as a QPSA is payable to the Participant's Beneficiary, in accordance with the remaining provisions of this Article VI.

(5) Surviving spouse elections. If the Participant's Vested Account Balance which the Trustee would apply to purchase the QPSA exceeds \$5,000, the Participant's surviving spouse may elect to have the Trustee commence payment of the QPSA at any time following the date of the Participant's death, but not later than Section 6.02 requires, and may elect any of the methods of payment described in Section 6.03, in lieu of the QPSA. In the absence of an election by the surviving spouse, the Plan Administrator must direct the Trustee to distribute the QPSA on the earliest administratively practicable date following the close of the Plan Year in which the latest of the following events occurs: (a) the Participant's death; (b) the date the Plan Administrator receives notification of or otherwise confirms the Participant's death; (c) the date the Participant would have attained Normal Retirement Age; or (d) the date the Participant would have attained age 62.

(6) QPSA notice/timing. The Plan Administrator must provide a written explanation of the QPSA to each married Participant within the following period which ends last: (a) the period beginning on the first day of the Plan Year in which the Participant attains age 32 and ending on the last day of the Plan Year in which the Participant attains age 34; (b) a reasonable period after an Employee becomes a Participant; or (c) a reasonable period after Section 6.04 of the Plan becomes applicable to the Participant. A "reasonable period" described in clauses (b) and (c) is the period beginning one year before and ending one year after the applicable event. If the Participant incurs a Separation from Service before attaining age 35, clauses (a), (b), and (c) do not apply and the Plan Administrator must provide the QPSA notice within the period beginning one year before and ending one year after the Separation from Service. If the Participant thereafter returns to employment with the Employer, the Plan Administrator will redetermine the applicable period. The QPSA notice must describe, in a manner consistent with Treasury regulations, the terms and conditions of the QPSA and of the waiver of the QPSA, comparable to the QPSA notice required under Section 6.04(A)(5).

(7) Waiver frequency and timing. The Plan does not limit the number of times the Participant may revoke a waiver of the QPSA or make a new waiver during the election period. The election period for waiver of the QPSA ends on the date of the Participant's death. A Participant's

QPSA waiver election is not valid unless the Participant makes the waiver election after the Participant has received the QPSA notice and no earlier than the first day of the Plan Year in which he/she attains age 35. However, if the Participant incurs a Separation from Service prior to the first day of the Plan Year in which he/she attains age 35, the Plan Administrator will accept a waiver election as to the Participant's Account Balance attributable to his/her Service prior to his/her Separation from Service. In addition, if a Participant who has not incurred a Separation from Service makes a valid waiver election, except for the age 35 Plan Year timing requirement above, the Plan Administrator will accept that election as valid, but only until the first day of the Plan Year in which the Participant attains age 35.

(8) Spousal consent to waiver. A Participant's QPSA waiver is not valid unless the Participant's spouse (to whom the QPSA is payable) satisfies or is excused from the consent requirements as described in Section 6.04 (A)(7), except the spouse need not consent to the form of benefit payable to the designated Beneficiary. The spouse's consent to the waiver of the QPSA is irrevocable, unless the Participant revokes the waiver election. The spouse also may execute a blanket consent as described in Section 6.04(A)(7)(a).

(C) Effect of Waiver. If the Participant has in effect a valid waiver election regarding the QJSA or the QPSA, the Plan Administrator must direct the Trustee to distribute the Participant's Vested Account Balance in accordance with Sections 6.01, 6.02 and 6.03.

(D) Loan Offset. The Plan Administrator will reduce the Participant's Vested Account Balance by any security interest (pursuant to any offset rights authorized by Section 6.06) held by the Plan by reason of a Participant loan, to determine the value of the Participant's Vested Account Balance distributable in the form of a QJSA or QPSA, provided the loan satisfied the spousal consent requirement described in Section 7.06(D).

(E) Effect of QDRO. For purposes of applying this Article VI, a former spouse (in lieu of the Participant's current spouse) is the Participant's spouse or surviving spouse to the extent provided under a QDRO described in Section 6.05. The provisions of this Section 6.04 apply separately to the portion of the Participant's Vested Account Balance subject to a QDRO and to the portion of the Participant's Vested Account Balance not subject to the QDRO.

(F) Vested Account Balance Not Exceeding \$5,000. The Trustee must distribute in a Lump-Sum a Participant's Vested Account Balance which the Trustee otherwise under Section 6.04 would apply to provide a QJSA or QPSA benefit, where the Participant's Vested Account Balance determined under Section 6.01(A)(4) does not exceed \$5,000, unless the Employer elects to apply any lesser amount in Appendix B.

(G) Profit Sharing Plan Exception. If this Plan is a Profit Sharing Plan, the Employer in its Adoption Agreement must elect whether the preceding provisions of Section 6.04 apply to all Participants or only to Participants who are not Exempt Participants.

(1) Definition of Exempt Participants. All Participants are Exempt Participants except the following Participants to whom Section 6.04 must be applied: (a) a Participant as respects whom the Plan is a direct or indirect transferee from a plan subject to the Code §417 requirements and the Plan received the Transfer after December 31, 1984, unless the Transfer is an Elective Transfer described in Section 11.06(E); (b) a Participant who elects a Life Annuity distribution (if Section 11.02(C)(3) of the Plan requires the Plan to provide a Life Annuity distribution option); or (c) a Participant whose benefits under a Defined Benefit Plan maintained by the Employer are offset by benefits provided under this Plan.

(2) Transfers. If a Participant receives a Transfer under Section 6.04(G)(1), clause (a) above, the Plan Administrator may elect to apply Section 6.04 only to the Participant's transferred balance and not to the Participant's remaining Account Balance provided that the Plan Administrator accounts properly for such balances.

(3) Distribution to Exempt Participant. The Plan Administrator must direct the Trustee to distribute the Exempt Participant's Vested Account Balance in accordance with Sections 6.01, 6.02 and 6.03.

(4) Exempt Participant Beneficiary designation. See Section 7.05(A)(3) as to requirements relating to a married Exempt Participant's Beneficiary designation.

6.05 QDRO DISTRIBUTIONS. Notwithstanding any other provision of this Plan, the Trustee, in accordance with the direction of the Plan Administrator, must comply with the provisions of a QDRO, as defined in Code §414(p)(1)(A), which is issued with respect to the Plan.

(A) Distribution at Any Time. This Plan specifically permits distribution to an alternate payee under a QDRO at any time, irrespective of whether the Participant has attained his/her earliest retirement age (as defined under Code §414(p)(4)(B)) under the Plan. However, a distribution to an alternate payee prior to the Participant's attainment of earliest retirement age is available only if: (1) the QDRO specifies distribution at that time or permits an agreement between the Plan and the alternate payee to authorize an earlier distribution; and (2) if the present value of the alternate payee's benefits under the Plan exceeds \$5,000, and the QDRO requires the alternate payee's consent to any distribution occurring prior to the Participant's attainment of earliest retirement age, the alternate payee gives such consent.

(B) Plan Terms Otherwise Apply. Except as to timing of distribution commencement under Section 6.05(A), nothing in this Section 6.05 gives a Participant or an alternate payee a right to receive a type or method of distribution, to receive any option, or to increase benefits in a manner that the Plan does not permit.

(C) QDRO Procedures. The Plan Administrator must establish reasonable procedures to determine the qualified status of a domestic relations order (as defined under Code §414(p)(1)(B)).

(1) Notices and order status. Upon receiving a domestic relations order, the Plan Administrator promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Plan Administrator must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Plan Administrator's determination. The Plan Administrator must provide notice under this Section 6.05(C)(1) by mailing to the individual's address specified in the domestic relations order, or in a manner consistent with DOL regulations.

(2) Interim amounts payable. If any portion of the Participant's Vested Account Balance is payable under the domestic relations order during the period the Plan Administrator is making its determination of the qualified status of the domestic relations order, the Plan Administrator must maintain a separate accounting of the amounts payable. If the Plan Administrator determines the order is a QDRO within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Plan Administrator will direct the Trustee to distribute the payable amounts in accordance with the QDRO. If the Plan Administrator does not make its determination of the qualified status of the order within the 18-month determination period, the Plan Administrator will direct the Trustee to distribute the payable amounts in the manner the Plan would distribute if the order did not exist and will apply the order prospectively if the Plan Administrator later determines the order is a QDRO.

(3) Segregated Account. To the extent it is not inconsistent with the provisions of the QDRO, the Plan Administrator under Section 7.04(A)(2)(c) may direct the Trustee to segregate the QDRO amount in a Segregated Account. The Trustee will make any payments or distributions required under this Section 6.05 by separate benefit checks or other separate distribution to the alternate payee(s).

6.06 DEFAULTED LOAN — TIMING OF OFFSET. If a Participant or a Beneficiary defaults on a Plan loan, the Plan Administrator will determine the timing of the reduction (offset) of the Participant's Vested Account Balance in accordance with this Section 6.06 and the Plan Administrator's loan policy.

(A) Offset if Distributable Event. If, under the loan policy a loan default also is a distributable event under the Plan, the Trustee, at the time of the loan default, will offset the Participant's Vested Account Balance by the lesser of the amount in default (including accrued interest) or the Plan's security interest in that Vested Account Balance.

(B) Restricted Accounts. If the loan is from a Restricted Pension Account and the loan default is a distributable event under the loan policy, the Trustee will offset the Participant's Account Balance in the manner described in Section 6.06(A) only if the Participant has incurred a

Separation from Service or has attained Normal Retirement Age. If a 401(k) Plan makes the loan, to the extent the loan is attributable to the Participant's Restricted 401(k) Accounts, the Trustee will not offset the Participant's Vested Account Balance prior to the earlier of the date the Participant incurs a Severance from Employment or the date the Participant attains age 59 1/2. Consistent with its loan policy, the Plan Administrator also may offset a Participant's defaulted loan upon Plan termination, provided the Participant's Account Balance is distributable upon Plan termination.

6.07 HARDSHIP DISTRIBUTIONS. The Employer in its Adoption Agreement may elect to permit a hardship distribution to an electing Participant. If the Employer elects to permit hardship distributions, the Employer, consistent with the Adoption Agreement and Applicable Law, will elect: (i) which Accounts are available for a hardship distribution; (ii) whether the Plan Administrator will administer the hardship distributions in accordance with the safe harbor provisions of Section 6.07(A) or, as may be permitted by Applicable Law, under the non-safe harbor provisions of Section 6.07(B); and (iii) whether the hardship distribution is an In-Service Distribution, an acceleration of a distribution occurring after Severance from Employment/Separation from Service, or both. The Employer in its Profit Sharing Plan Adoption Agreement may elect to apply the safe harbor rules.

(A) Safe Harbor Need/Necessity.

(1) Deemed immediate and heavy need. For purposes of this Plan, a safe harbor hardship distribution is a distribution on account of one or more of the following immediate and heavy financial needs: (a) expenses for (or necessary to obtain) medical care for the Participant, for the Participant's spouse, or for any of the Participant's dependents that would be deductible under Code §213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income); (b) costs directly related to the purchase (excluding mortgage payments) of a principal residence of the Participant; (c) payment of post-secondary education tuition and related educational fees (including room and board), for the next 12-month period, for the Participant, for the Participant's spouse, for the Participant's children, or for any of the Participant's dependents; (d) payments necessary to prevent the eviction of the Participant from his/her principal residence or the foreclosure of the mortgage on the Participant's principal residence; (e) payments for the funeral or burial expenses for the Participant's deceased parent, spouse, child, or dependent; or (f) expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code §165 (determined without regard to whether the loss exceeds 10% of adjusted gross income). Clauses (e) and (f) only apply as of the Final 401(k) Regulations Effective Date. As used in this Section 6.07(A)(1), the term "dependent" means a dependent as defined in Code §152 but for Taxable Years beginning after 2004 as applied to clause (e), means without regard to Code §152(d)(1)(B) and, for purposes of clause (c), means as applied without regard to Code §§152(b)(1) or (2) and 152(d)(1)(B). Notwithstanding the immediately preceding sentence, the Plan Administrator in applying this Section 6.07 may elect to limit the term "dependent" to

those persons whom the Participant may claim as a dependent on IRS Form 1040. The administrative forms related to hardship distributions will reflect which of these definitions of "dependent" the Plan Administrator has elected to apply.

(2) Deemed necessity. The following restrictions apply to a Participant who receives a safe harbor hardship distribution: (a) the Participant may not make Elective Deferrals or Employee Contributions to the Plan and other plans (described below) maintained by the Employer for the 6-month period (or any longer period the Plan Administrator may specify in a hardship distribution policy) following the date of his/her hardship distribution; (b) the distribution may not exceed the amount of the Participant's immediate and heavy financial need (including any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution); and (c) the Participant must have obtained all distributions (including distribution of Code §404(k) ESOP dividends), other than hardship distributions, and all nontaxable loans (determined at the time of the loan) currently available under the Plan and all other plans (described below) maintained by the Employer. "Other plans" for purposes of clauses (a) and (c) means all other qualified plans and all nonqualified plans of deferred compensation maintained by the Employer including a cash or deferred arrangement that is part of a cafeteria plan under Code §125 (but excluding the mandatory employee contribution portion of a Defined Benefit Plan or a health or welfare benefit plan, including one that is part of a cafeteria plan). For purposes of clause (a), "other plans" also includes stock option, stock purchase and other similar plans maintained by the Employer.

(B) Non-safe Harbor Need/Necessity. For purposes of this Plan, a non-safe harbor hardship distribution is a distribution on account of an immediate and heavy financial need. The distribution cannot exceed the amount necessary to satisfy the need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution). The Plan will not make a non-safe harbor hardship distribution if the Participant may relieve the need from other resources that are reasonably available to the Participant. The Plan Administrator will administer a hardship distribution under this Section 6.07(B) in accordance with Treas. Reg. §1.401(k)-1(d)(3)(iv), but excluding paragraph (E) thereof.

(C) Policy/Reliance. The Plan Administrator may adopt a uniform and nondiscriminatory policy regarding hardship distributions including objective standards for determining whether a Participant has an immediate and heavy financial need and for substantiating the extent of the Participant's need. The Plan Administrator, absent actual contrary knowledge, may rely on a Participant's written representation that the distribution is on account of hardship (as defined in Section 6.07(A)(1)), that the distribution satisfies Section 6.07(B) and/or that the distribution satisfies clause (b) under 6.07(A)(2).

(D) No Counterproductive Actions. A Participant, to establish necessity under either Sections 6.07(A)(2) or 6.07(B) need not take counterproductive actions as would

increase the financial need. Such actions include, but are not limited to, being required to first take a Participant loan to purchase a principal residence where such a loan would result in the Participant's disqualification from obtaining other necessary financing.

(E) Restrictions on Amount; Grandfathered Amounts. The maximum amount distributable from Elective Deferrals as a hardship distribution may not exceed the amount equal to the Participant's total Elective Deferrals as of the hardship distribution date, reduced by the amount of any Elective Deferrals previously distributed to the Participant based on hardship or otherwise. QMACs and QNECs, and any Earnings on such contributions, and Earnings on the Participant's Elective Deferrals, credited as of December 31, 1988 (collectively, "grandfathered amounts"), increase the amount of the maximum available hardship distribution only if the Employer in Appendix B elects to include such amounts. The restrictions of this Section 6.07(E) do not apply to hardship distributions from Nonelective Contributions, Regular Matching Contributions or Additional Matching Contributions and such distributions also may include Earnings on such Accounts. No hardship distribution is available from Safe harbor Contribution Accounts.

(F) Ordering. If the Plan permits a hardship distribution from more than one Account type, the Participant or the Plan Administrator in accordance with Section 6.03(B)(6) will determine the ordering of a Participant's hardship distribution from the hardship distribution eligible Accounts, including ordering as between the Participant's Pre-Tax Deferral Account and Roth Deferral Account, if any, provided that any ordering is consistent with any restriction on hardship distributions under this Section 6.07.

(G) Prototype and Volume Submitter Plans. A Participant's hardship distribution made from Elective Deferrals under a Prototype Plan must comply with the safe harbor rules of Section 6.07(A). A Participant's hardship distribution made from the Nonelective Contribution, Regular Matching Contribution or Additional Matching Contribution Accounts under a Prototype Plan, as the Employer elects in its Adoption Agreement, may comply with the safe harbor rules of Section 6.07(A) or the non-safe harbor rules of Section 6.07(B). A Volume Submitter Plan, as the Employer elects in its Adoption Agreement, may provide hardship distributions under the safe harbor rules of Section 6.07(A) or under the non-safe harbor hardship distribution rules of Section 6.07(B).

6.08 DIRECT ROLLOVER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.

(A) Participant Election. A Participant (including for this purpose, a former Employee) may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of his/her Eligible Rollover Distribution from the Plan paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover. For purposes of this Section 6.08, a Participant includes as to their respective interests, a Participant's surviving spouse and the Participant's spouse or former spouse who is an alternate payee under a QDRO.

(B) Rollover and Withholding Notice. At least 30 days but not more than 90 days prior to the Trustee's distribution of an Eligible Rollover Distribution, the Plan Administrator must provide a written notice (including a summary notice as permitted under applicable Treasury regulations) explaining to the distributee the rollover option, the applicability of mandatory 20% federal withholding to any amount not directly rolled over, and the recipient's right to roll over the distribution within 60 days after the date of receipt of the distribution ("rollover notice"). If applicable, the rollover notice also must explain the availability of income averaging and the exclusion of net unrealized appreciation. A recipient of an Eligible Rollover Distribution (whether he/she elects a Direct Rollover or elects to receive the distribution), also may elect to receive distribution at any administratively practicable time which is earlier than 30 days (but more than 7 days if Section 6.04 applies) following receipt of the rollover notice.

(C) Default Rollover. The Plan Administrator, in the case of a Participant who does not respond timely to the rollover notice, may make a Direct Rollover of the Participant's Account (as described in Revenue Ruling 2000-36 or in any successor guidance, or in any DOL guidance) in lieu of distributing the Participant's Account.

(D) Automatic Rollover. If the Employer elects in its Adoption Agreement to provide for Mandatory Distributions described in Section 6.01(A), the Plan Administrator will apply this Section 6.08(D) to all Mandatory Distributions made before the Participant attains the later of age 62 or Normal Retirement Age. The Employer in its Adoption Agreement will elect whether to apply this Section 6.08(D) to a specified amount or will apply this Section only to such Mandatory Distributions which exceed \$1,000. In the event of any Mandatory Distribution subject to this Section 6.08(D) and made on or after March 28, 2005, if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan the Participant specifies in a Direct Rollover or to receive the distribution directly in accordance with Section 6.01(A), then the Plan Administrator will pay the distribution in a Direct Rollover to an Individual Retirement Plan the Plan Administrator designates ("Automatic Rollover"). In the case of a Restated Plan with a restated Effective Date before March 29, 2005, as to any Mandatory Distribution which otherwise would be subject to this Section 6.08 (D) except that the distribution occurred before March 29, 2005, the terms of the prior plan document control as to the disposition of the Account.

(1) Determination of Mandatory Distribution amount.

(a) Rollovers count. The Plan Administrator, in determining whether a Mandatory Distribution is greater than \$1,000 for purposes of this Section 6.08(D), will include the portion of the Participant's distribution attributable to any Rollover Contribution, regardless of the Employer's Adoption Agreement election to include or exclude Rollover Contributions in determining a Mandatory Distribution.

(b) Roth and Pre-Tax Deferrals. In determining the Mandatory Distribution amount under this Section 6.08(D), the Plan Administrator will aggregate a Participant's Roth Deferral and Pre-Tax Deferral Accounts if each Account Balance exceeds \$200. If either the Roth Deferral Account or the Pre-Tax Deferral Account is less than \$200, the Plan Administrator will apply this Section 6.08(D) only to the other Account and will not aggregate the Account Balance under \$200 with the other Account Balance.

(2) Beneficiaries, alternate payees and termination. The Automatic Rollover provisions of this Section 6.08(D) do not apply to spousal Beneficiaries, to alternate payees under a QDRO or to distributions upon Plan termination.

(E) Limitation on Employee Contribution and Roth Rollovers.

(1) Employee Contributions. A Participant's Employee Contribution Account only may be transferred by means of a Direct Rollover to a qualified Defined Contribution Plan described in Code §§401(a) or 403(a) that agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income. A Participant's Employee Contributions also may be transferred by a Direct Rollover or by a 60-day rollover to an Individual Retirement Plan. For purposes of a rollover of a distribution which includes both Employee Contributions and pre-tax amounts, the Plan Administrator will treat the first amounts rolled over as attributable to the pre-tax amounts.

(2) Roth Deferrals. A Participant's Roth Deferral Account only may be transferred by means of a Direct Rollover to a qualified Defined Contribution Plan described in Code §401(k), or to a Code §403(b) plan that permits Roth deferrals. A Participant also may transfer the taxable portion of his/her Roth Deferral Account by a 60-day rollover to a qualified Defined Contribution Plan under Code §401(k) or to a Code §403(b) plan. A Participant's Roth Deferral Account Contributions also may be transferred by a Direct Rollover or by a 60-day rollover to a Roth Individual Retirement Plan.

(F) Definitions. The following definitions apply to this Section 6.08:

(1) Direct Rollover. A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan the distributee specifies in his/her Direct Rollover election or in the case of an Automatic Rollover, to the Individual Retirement Plan that the Plan Administrator designates.

(2) Eligible Retirement Plan. An Eligible Retirement Plan is an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b), an annuity plan described in Code §403(a), a qualified trust described in Code §401(a), an arrangement described in Code §403(b), or an eligible deferred compensation plan described in Code §457(b) sponsored by a governmental employer which accepts the

Participant's or alternate payee's Eligible Rollover Distribution. However, with regard to a Participant's Roth Deferral Account, an Eligible Retirement Plan is a Roth IRA described in Code §408A, a Roth account in another 401(k) plan which permits Roth deferrals or a Roth account in a 403(b) plan which permits Roth deferrals.

(3) Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the Participant's Vested Account Balance, except: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's Designated Beneficiary, or for a specified period of ten years or more; (b) any RMD under Section 6.02; (c) the portion of any distribution which is not includible in gross income (except for Roth Deferral Accounts, Employee Contributions and determined without regard to the exclusion of net unrealized appreciation with respect to employer securities); (d) any hardship distribution; (e) a corrective distribution made under Article IV; (f) a deemed distribution resulting from a defaulted Participant loan which is not also an offset distribution; (g) any other distributions described in Treas. Reg. §1.402(c)-2; and (h) as to a Direct Rollover, any distribution which otherwise would be an Eligible Rollover Distribution, but where the total distributions to the Participant during that calendar year are reasonably expected to be less than \$200. For purposes of clause (h), a Participant's Roth Deferral Account is deemed to constitute a separate plan that is subject to a separate \$200 limit. The Plan Administrator, in a form on which a Participant may elect a Direct Rollover, may restrict a Participant from directly rolling over only a part of an Eligible Rollover Distribution where the distribution amount does not exceed \$500. In the case of such distribution exceeding \$500, the Plan Administrator's form may require that any amount the Participant elects to directly roll over be equal to \$500 or a lesser specified amount.

(4) Individual Retirement Plan. An Individual Retirement Plan is an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b).

6.09 REPLACEMENT OF \$5,000 AMOUNT. If the Employer in its Adoption Agreement under Section 6.01(A)(1) elects no Mandatory Distributions or elects a Mandatory Distribution amount which is less than \$5,000, all other Plan references to "\$5,000" remain unchanged unless the Employer in Appendix B elects to apply any lesser amount. However, any such override election does not apply to Sections 3.02(D) (relating to Catch-Up Deferrals, 3.10 (relating to SIMPLE Plans) and 3.12(C)(2) (relating to Designated IRAs) and references therein remain at \$5,000. If this Plan is a Restated Plan, any Employer election under this Section 6.09 must be consistent with the Plan Administrator's operation of the Plan prior to the Employer's execution of its Restated Plan.

6.10 TEFRA ELECTIONS.

(A) Application of Election in Lieu of Other Provisions. Notwithstanding the provisions of Sections 6.01, 6.02 and 6.03, if the Participant (or Beneficiary) signed a written distribution designation prior to January 1, 1984 ("TEFRA election"), the Plan Administrator must direct the Trustee to distribute the Participant's Vested Account Balance in accordance with that election, subject however, to the Survivor Annuity requirements, if applicable, of Section 6.04.

(B) Non-application. This Section 6.10 does not apply to a TEFRA election, and the Plan Administrator will not comply with that election, if any of the following applies: (1) the elected method of distribution would have disqualified the Plan under Code §401(a)(9) as in effect on December 31, 1983; (2) the Participant did not have an Account Balance as of December 31, 1983; (3) the election does not specify the timing and form of the distribution and the death Beneficiaries (in order of priority); (4) the substitution of a Beneficiary modifies the distribution payment period; or, (5) the Participant (or Beneficiary) modifies or revokes the election. In the event of a revocation, the Trustee must distribute, no later than December 31 of the calendar year following the year of revocation, the amount which the Participant would have received under Section 6.02 if the distribution designation had not been in effect or, if the Beneficiary revokes the distribution designation, the amount which the Beneficiary would have received under Section 6.02 if the distribution designation had not been in effect. The Plan Administrator will apply this Section 6.10 to rollovers and Transfers in accordance with Treasury Reg. §1.401(a)(9)-8.

**ARTICLE VII
ADMINISTRATIVE PROVISIONS**

7.01 EMPLOYER ADMINISTRATIVE PROVISIONS.

(A) Information to Plan Administrator. The Employer must supply current information to the Plan Administrator, including the name, date of birth, date of employment, Compensation, leaves of absence, Years of Service and date of Separation from Service of each Employee who is, or who will be eligible to become, a Participant under the Plan, together with any other information which the Plan Administrator considers necessary to administer the Plan. The Employer's records as to the information the Employer furnishes to the Plan Administrator are conclusive as to all persons.

(B) Plan Contributions. The Employer is solely responsible to determine the proper amount of any Employer Contribution it makes to the Plan and for the timely deposit to the Trust of the Employer Contributions.

(C) Employer Action. The Employer must take any action under the Plan in accordance with applicable Plan provisions and with proper authority such that the action is valid under Applicable Law and is binding upon the Employer.

(D) No Responsibility for Others. Except as required under ERISA, the Employer has no responsibility or obligation under the Plan to Employees, Participants or Beneficiaries for any act required of the Plan Administrator, the Trustee, the Custodian, or any other service provider to the Plan (unless the Employer also serves in such capacities).

(E) Indemnity of Certain Fiduciaries. The Employer will indemnify, defend and hold harmless the Plan Administrator from and against any and all loss, damages or liability to which the Plan Administrator may be subjected by reason of any act or omission (except willful misconduct or gross negligence) in its official capacities in the administration of this Plan or Trust or both, including attorneys' fees and all other expenses reasonably incurred in the Plan Administrator's defense, in case the Employer fails to provide such defense. The indemnification provisions of this Section 7.01(E) do not relieve the Plan Administrator from any liability the Plan Administrator may have under ERISA for breach of a fiduciary duty. The Plan Administrator and the Employer may execute a written agreement further delineating the indemnification agreement of this Section 7.01(E), provided the agreement does not violate ERISA or other Applicable Law. The indemnification provisions of this Section 7.01(E) do not extend to any Trustee, third party administrator, Custodian or other Plan service provider unless so provided in a written agreement executed by such persons and the Employer.

(F) Settlor Expenses. The Employer will pay all reasonable Plan expenses that the Plan Administrator under Section 7.04(C) determines are "settlor expenses" under ERISA.

7.02 PLAN ADMINISTRATOR.

(A) Compensation and Expenses. The Plan Administrator (and any individuals serving as Plan Administrator) will serve without compensation for services as such (unless the Plan Administrator is not the Employer or an Employee), but the Employer or the Plan will pay all reasonable expenses of the Plan Administrator, in accordance with Section 7.04(C)(2).

(B) Resignation and Removal. If the Employer, under Section 1.41, appoints one or more persons to serve as Plan Administrator, such person(s) shall serve until they resign by written notice to the Employer or until the Employer removes them by written notice. In case of a vacancy in the position of Plan Administrator, the Employer will exercise any and all of the powers, authority, duties and discretion conferred upon the Plan Administrator pending the filling of the vacancy.

(C) General Powers and Duties. The Plan Administrator has the following general powers and duties which are in addition to those the Plan otherwise accords to the Plan Administrator:

(1) Eligibility/benefit determination. To determine the rights of eligibility of an Employee to participate in the Plan, all factual questions that arise in the course of administering the Plan, the value of a Participant's Account Balance (based on the value of the Trust assets, as determined by the Trustee, the Custodian or the Named Fiduciary) and the Vested percentage of each Participant's Account Balance.

(2) Rules/policies. To adopt rules of procedure and regulations or policies the Plan Administrator considers reasonable or necessary for the proper and efficient administration of the Plan, provided the rules are not inconsistent with the terms of the Plan, the Code, ERISA or other Applicable Law. The Plan Administrator may, but is not required to reduce such rules, regulations or policies to writing, unless otherwise required under Applicable Law. The Plan Administrator at any time may amend or terminate prospectively any Plan policy without the requirement of a formal Plan amendment. The Employer or Plan Administrator also may create and modify from time to time one or more administrative checklists which are not part of the Plan, but which are for the purpose of tracking certain plan operational features, to generate written policies and plan forms, and to facilitate proper administration of the Plan.

(3) Construction/enforcement. To construe and enforce the terms of the Plan and the rules, regulations and policies the Plan Administrator adopts, including discretion to interpret the basic plan document, the Adoption Agreement and any document related to the Plan's operation.

(4) **Distribution/valuation.** To direct the Trustee regarding the crediting and distribution of the Trust Fund, to establish additional Valuation Dates, and to direct the Trustee to conduct interim valuations on such Valuation Dates under Section 8.02(C)(4).

(5) **Claims.** To review and render decisions regarding a claim for (or denial of a claim for) a benefit under the Plan.

(6) **Information to Employer.** To furnish the Employer with information which the Employer may require for tax or other purposes.

(7) **Service providers.** To engage the service of agents whom the Plan Administrator may deem advisable to assist it with the performance of its duties.

(8) **Investment Manager.** If the Plan Administrator is the Named Fiduciary (or the Named Fiduciary otherwise designates the Plan Administrator to do so), to engage the services of an Investment Manager or Managers (as defined in ERISA §3(38)), each of whom will have full power and authority to manage, acquire or dispose (or direct the Trustee with respect to acquisition or disposition) of any Plan asset under such Investment Manager's control.

(9) **Funding.** As the Code or ERISA may require, to establish and maintain a funding policy and a funding standard account and to make credits and charges to that account. The Plan Administrator will review, not less often than annually, all pertinent Employee information and Plan data in order to establish the funding policy of the Plan and to determine the appropriate methods of carrying out the Plan's objectives. The Plan Administrator must communicate periodically, as it deems appropriate, to the Trustee and to any Plan Investment Manager the Plan's short-term and long-term financial needs for the coordination of the Plan's investment policy with Plan financial requirements.

(10) **Records.** To maintain Plan records and records of the Plan Administrator's activities, as necessary or appropriate for the proper administration of the Plan.

(11) **Tax returns and other filings.** To file with DOL or IRS as may be required, the Plan's informational tax return, and to make such other filings as the Plan Administrator deems necessary or appropriate.

(12) **Notices and disclosures.** To give and to make to Participants and to other parties, all Plan related notices and disclosures required by Applicable Law.

(13) **Overpayment.** To seek return from a Participant or Beneficiary of any distributed amount which exceeds the distributable Vested Account Balance (or exceeds the amount which otherwise should have been distributed) and to allocate any recovered overpayment in accordance with the Plan terms.

(14) **Catch-all.** To make any other determinations and undertake any other actions the Plan Administrator in its discretion believes are necessary or appropriate for the administration of the Plan (except to the extent that the

Employer provides express contrary direction) and to otherwise administer the Plan in accordance with the Plan terms and Applicable Law.

(D) **401(k) Plan Elective Deferrals.** If the Plan is a 401(k) Plan, the Plan Administrator may adopt such policies regarding Elective Deferrals as it deems necessary or appropriate to administer the Plan. The Plan Administrator also will prescribe a Salary Reduction Agreement form for use by Participants. See Section 1.54.

(E) **Limitations on Plan Administrator Responsibility.**

(1) **Acts of others.** Except as required under ERISA, the Plan Administrator has no responsibility or obligation under the Plan to Participants or Beneficiaries for any act required of the Employer, the Trustee, the Custodian or any other service provider to the Plan (unless the Plan Administrator also serves in such capacities).

(2) **Plan contributions.** The Plan Administrator is not responsible for collecting any required Plan contribution or to determine the correctness or deductibility of any Employer Contribution.

(3) **Reliance on information.** The Plan Administrator in administering the Plan is entitled to, but is not required to rely upon, information which a Participant, Beneficiary, Trustee, Custodian, the Employer, a Plan service provider or representatives thereof provide to the Plan Administrator.

7.03 DIRECTION OF INVESTMENT.

(A) **Employer Direction of Investment.** The Employer has the right to direct the discretionary Trustee with respect to the investment and re-investment of assets comprising the Trust Fund only if and to the extent the discretionary Trustee consents in writing to permit such direction. The Employer will direct a nondiscretionary Trustee as to the Trust Fund investments in accordance with Article VIII unless an Investment Manager, the Participants or the Named Fiduciary are directing the nondiscretionary Trustee as to such investments.

(B) **Participant Direction of Investment.** The Plan Administrator may adopt a policy to permit Participants to direct the investment of one or more of their Plan Accounts, subject to the provisions of this Section 7.03(B). The Plan Administrator may impose reasonable and nondiscriminatory administrative conditions on the Participants' ability to direct their Account investments. For purposes of this Section 7.03(B), a Participant includes a Beneficiary where the Beneficiary has succeeded to the Participant's Account and where the Plan Administrator's policy affords the Beneficiary self-direction rights. However, under the Plan Administrator's policy a Beneficiary may or may not have the same direction of investment rights as a Participant.

(1) **Trustee authorization and procedures.** Under any Plan Administrator policy permitting Participant direction of investment, the Trustee must consent in writing to permit such direction. If the Employer, in its Adoption Agreement, designates the Trustee as a nondiscretionary

Trustee, the Employer may direct the Trustee to consent to Participant direction of investment. If the Trustee consents to Participant direction of investment, the Trustee only will accept direction from each Participant (or from the Participant's properly appointed independent investment adviser, financial planner or legal representative) on a written direction of investment form the Plan Administrator or Trustee provides or otherwise approves for this purpose. The Trustee may establish written procedures relating to Participant direction of investment under this Section 7.03(B) as are not inconsistent with the Plan Administrator's policy regarding Participant direction, including procedures or conditions for electronic transfers or for changes in investments by Participants or by their properly appointed independent investment advisers, financial planners or legal representatives. The Plan Administrator will maintain, or direct the Trustee to maintain, an appropriate Account designated in the name of the Plan or Trust and for the benefit of the Participant, to the extent a Participant's Account is subject to Participant self-direction. Such an Account is a Participant-Directed Account under Section 7.04(A)(2)(b).

(2) **ERISA §404(c).** No Plan fiduciary (including the Employer and Trustee) is liable for any loss or for any breach resulting from a Participant's or Beneficiary's direction of the investment of any part of his/her directed Account to the extent the Participant's or Beneficiary's exercise of his/her right to direct the investment of his/her Account satisfies the requirements of ERISA §404(c).

(3) **Participant loans.** As part of any loan policy the Plan Administrator establishes under Section 7.06, the Plan Administrator under Section 7.06(E) may treat a Plan loan made to a Participant as a Participant direction of investment, even if the Plan Administrator has not adopted a policy permitting Participants to direct their own Account investments.

(4) **Investment services programs.** The Plan Administrator, as part of its Participant direction policy under this Section 7.03(B), may permit Participants to appoint an Investment Manager or Managers, which may be the Trustee, Custodian or an affiliate thereof, to render investment allocation services, investment advice or management services (collectively, an "investment services program") to the appointing Participants, provided that any such appointment and the operation of any such investment services program are not in violation of Applicable Law.

(C) **Direction Consistent with Plan and ERISA.** To constitute a proper direction, any direction of investment given to the Trustee or Custodian under the Plan must be in accordance with the Plan terms and must not be contrary to Applicable Law.

7.04 ACCOUNT ADMINISTRATION, VALUATION AND EXPENSES.

(A) **Individual Accounts.** The Plan Administrator, as necessary for the proper administration of the Plan, will maintain, or direct the Trustee to maintain, a separate Account, or multiple Accounts, in the name of each Participant to reflect the Participant's Account Balance under the Plan. The Plan Administrator will make its

allocations of Employer Contributions and of Earnings, or will request the Trustee to make such allocations, to the Accounts of the Participants as necessary to maintain proper Plan records and in accordance with the applicable: (i) Contribution Types under Section 7.04(A)(1); (ii) allocation conditions under Section 3.06; (iii) investment account types under Section 7.04(A)(2); and (iv) Earnings allocation methods under Section 7.04(B).

(1) **By Contribution Type.** The Plan Administrator, will establish Plan Accounts for each Participant to reflect his/her Accounts attributable to the following Contribution Types and the Earnings attributable thereto: Pre-Tax Deferrals, Roth Deferrals, Regular Matching Contributions, Nonelective and other Employer Contributions, QNECs, QMACs, Safe Harbor Contributions, Additional Matching Contributions, Rollover Contributions (including Roth versus pre-tax amounts), Transfers, SIMPLE Contributions, Prevailing Wage Contributions, Employee Contributions, DEC's and Designated IRA Contributions.

(2) **By investment account type.** The Plan Administrator will establish separate Accounts for each Participant to reflect his/her investment account types as described below:

(a) **Pooled Accounts.** A Pooled Account is an Account which for investment purposes is not a Segregated Account or a Participant-Directed Account. If any or all Plan investment Accounts are Pooled Accounts, each Participant's Account has an undivided interest in the assets comprising the Pooled Account. In a Pooled Account, the value of each Participant's Account Balance consists of that proportion of the net worth (at fair market value) of the Trust Fund which the net credit balance in his/her Account (exclusive of the cash value of incidental benefit insurance contracts) bears to the total net credit balance in the Accounts (exclusive of the cash value of the incidental benefit insurance contracts) of all Participants plus the cash surrender value of any incidental benefit insurance contracts held by the Trustee on the Participant's life.

(b) **Participant-Directed Accounts.** A Participant-Directed Account is an Account that the Plan Administrator establishes and maintains or directs the Trustee to establish and maintain for a Participant to invest in one or more assets that are not pooled assets held by the Trust, such as assets in a brokerage account or other property in which other Participants do not have any interest. As the Plan Administrator determines, a Participant-Directed Account may provide for a limited number and type of investment options or funds, or may be open-ended and subject only to any limitations imposed by ERISA or other Applicable Law. A Participant may have one or more Participant-Directed Accounts in addition to Pooled or Segregated Accounts. A Participant-Directed Account is credited and charged with the Earnings under Section 7.04(B)(4)(e). As of each Valuation Date, the Plan Administrator must reduce a Participant-Directed Account for any forfeiture arising from Section 5.07 after the Plan Administrator has made all other allocations, changes or adjustments to the Account for the valuation period.

(c) **Segregated Accounts.** A Segregated Account is an Account the Plan Administrator establishes and maintains or directs the Trustee to establish and maintain for a Participant: (i) as the result of a cash-out repayment under Section 5.04; (ii) to facilitate installment payments under Section 6.03; (iii) to hold a QDRO amount under Section 6.05; (iv) to prevent a distortion of Plan Earnings allocations; or (v) for such other purposes as the Plan Administrator may direct. A Segregated Account receives all income it earns and bears all expense or loss it incurs. The Trustee will invest the assets of a Segregated Account consistent with the purpose for which the Plan Administrator or Trustee established the Account. As of each Valuation Date, the Plan Administrator must reduce a Segregated Account for any forfeiture arising under Section 5.07 after the Plan Administrator has made all other allocations, changes or adjustments to the Account for the Valuation Period.

(3) **Value of Account/distributions.** The value of a Participant's Account is equal to the sum of all contributions, Earnings and other additions credited to the Account, less all distributions (including distributions to Beneficiaries and to alternate payees and also including disbursement of Plan loan proceeds), expenses and other charges against the Account as of a Valuation Date or other relevant date. For purposes of a distribution under the Plan, the value of a Participant's Account Balance is its value as of the Valuation Date immediately preceding the date of the distribution. If any or all Plan investment Accounts are Participant-Directed Accounts, the directing Participant's Account Balance consists of the assets held within the Participant-Directed Account and the value of the Account is the fair market value of such assets.

(4) **Account statements.** As soon as practicable after the Accounting Date of each Plan Year and any other date that ERISA requires, the Plan Administrator will deliver within any time prescribed by ERISA, to each Participant (and to each Beneficiary) a statement reflecting the amount of his/her Account Balance in the Trust as of the statement date or most recent Valuation Date. The statement will also include any and all other information as of that date that ERISA may require. No Participant, except the Plan Administrator/Participant or Trustee/Participant, has the right to inspect the records reflecting the Account of any other Participant.

(B) **Allocation of Earnings.** This Section 7.04(B) applies solely to the allocation of Earnings of the Trust Fund. The Plan Administrator will allocate Employer Contributions and Participant forfeitures, if any, in accordance with Article III.

(1) **Allocate as of Valuation Date.** As of each Valuation Date, the Plan Administrator must adjust Accounts to reflect Earnings for the Valuation Period since the last Valuation Date.

(2) **Definition of Valuation Date.** A Valuation Date under this Plan is each: (a) Accounting Date; (b) Valuation Date the Employer elects in its Adoption Agreement; or (c) Valuation Date the Plan Administrator establishes under Section 7.02(C)(4). The Employer in its Adoption Agreement or the Plan Administrator may elect alternative Valuation Dates for the different Contribution Types which the Plan Administrator maintains under the Plan.

(3) **Definition of Valuation Period.** The Valuation Period is the period beginning on the day after the last Valuation Date and ending on the current Valuation Date.

(4) **Allocation methods.** The Plan Administrator will allocate Earnings to the Participant Accounts in accordance with the daily valuation method, balance forward method, balance forward with adjustment method, weighted average method, Participant-directed Account method, or other method the Employer elects under its Adoption Agreement. The Employer in its Adoption Agreement may elect alternative methods under which the Plan Administrator will allocate the Earnings to the Accounts reflecting different Contribution Types or investment Account types which the Plan Administrator maintains under the Plan. The Plan Administrator first will adjust the Participant Accounts, as those Accounts stood at the beginning of the current Valuation Period, by reducing the Accounts for any forfeitures arising under the Plan, for amounts charged during the Valuation Period to the Accounts in accordance with Section 7.04(C)(2)(b) (relating to distributions and to loan disbursement payments) and Section 9.01 (relating to insurance premiums), and for the cash value of incidental benefit insurance contracts. The Plan Administrator then, subject to the restoration allocation requirements of the Plan, will allocate Earnings under the applicable valuation method.

(a) **Daily valuation method.** If the Employer in its Adoption Agreement elects to apply the daily valuation method, the Plan Administrator will allocate Earnings on each day of the Plan Year for which Plan assets are valued on an established market and the Trustee is conducting business.

(b) **Balance forward method.** If the Employer in its Adoption Agreement elects to apply the balance forward method, the Plan Administrator will allocate Earnings pro rata to the adjusted Participant Accounts, since the last Valuation Date.

(c) **Balance forward with adjustment method.** If the Employer in its Adoption Agreement elects to apply the balance forward with adjustment method, the Plan Administrator will allocate pursuant to the balance forward method, except it will treat as part of the relevant Account at the beginning of the Valuation Period the percentage of the contributions made as the Employer elects in its Adoption Agreement, during the Valuation Period the Employer elects in its Adoption Agreement.

(d) **Weighted average method.** If the Employer in its Adoption Agreement elects to apply a weighted average allocation method, the Plan Administrator will allocate pursuant to the balance forward method, except it will treat a weighted portion of the applicable contributions as if includable in the Participant's Account as of the beginning of the Valuation Period. The weighted portion is a fraction, the numerator of which is the number of months in the Valuation Period, excluding each month in the Valuation Period which begins prior to the contribution date of the applicable contributions, and the denominator of

which is the number of months in the Valuation Period. The Employer in its Adoption Agreement may elect to substitute a weighting period other than months for purposes of this weighted average allocation.

(e) Participant-Directed Account method. The Employer in its Adoption Agreement must elect to apply the Participant-Directed Account method to any Participant-Directed Account under the Plan. See Sections 7.03(B) and 7.04(A)(2)(b). Under the Participant-Directed Account method: (i) each Participant-directed Account is credited and charged with the Earnings such Account generates; (ii) the Employer's election, if any, in its Adoption Agreement of another method for the allocation of Earnings will not apply to any Participant-Directed Account; and (iii) the Participant-Directed Account will be valued at least annually.

(5) Special Earnings allocation rules.

(a) Code §415 Excess Amounts. An Excess Amount or suspense account described in Article IV does not share in the allocation of Earnings described in this Section 7.04(B).

(b) Contributions prior to accrual or precise determination. If the Employer in its Adoption Agreement elects to impose one or more allocation conditions under Section 3.06 and the Employer contributes to the Plan amounts which at the time of the contribution have not accrued under the Plan terms ("pre-accrual contributions"), the Trustee may hold the pre-accrual contributions in the Trust and may invest such contributions as the Trustee determines, pending accrual and allocation to Participant Accounts. When the Plan Administrator allocates to Participants who have satisfied the Plan's allocation conditions the Employer's pre-accrual contributions, the Plan Administrator also will allocate the Earnings thereon pro rata in relation to each Participant's share of the pre-accrual contribution. The Plan Administrator also may elect to apply this Section 7.04(B)(5)(b) to any other situation in which the Plan Administrator cannot determine precisely the amount a Participant's allocation as of the date that the Employer makes an Employer Contribution (excluding Elective Deferrals) to the Trust. The Employer in Appendix B may elect an alternative nondiscriminatory method to allocate the Earnings attributable to contributions described in this Section 7.04(B)(5)(b).

(c) Forfeitures prior to accrual. The Plan Administrator may maintain, or may direct the Trustee to maintain, a separate temporary forfeiture Account in the name of the Plan to account for Participant forfeitures which occur during the Plan Year. The Trustee will direct the investment of any separate temporary forfeiture Account. As of each Accounting Date, or interim Valuation Date, if applicable, the Plan Administrator will allocate the Earnings from the temporary forfeiture Account, if any, to the Accounts of the Participants in accordance with the provisions of Section 7.04(B)(4), or will allocate such Earnings in the same manner as Earnings on pre-accrual contributions under Section 7.04(B)(5)(b).

(d) Accounting after Forfeiture Break in Service. If a Participant re-enters the Plan subsequent to his/her having a Forfeiture Break in Service (as defined in Section 5.06(B)), the Plan Administrator, or the Trustee, must maintain a separate Account for the Participant's pre-Forfeiture Break in Service Account Balance and a separate Account for his post-Forfeiture Break in Service Account Balance, unless the Participant's entire Account Balance under the Plan is 100% Vested.

(e) Coordination of allocation and valuation elections. If the Plan is a 401(k) Plan that provides for Elective Deferrals, if the Plan permits Employee Contributions, or if the Plan allocates Nonelective or Matching Contributions as of any date other than the last day of the Plan Year, the Employer in its Adoption Agreement must elect the method the Plan Administrator will apply to allocate Earnings to such contributions made during the Plan Year and must elect any alternative Valuation Dates for the different Account types which the Plan Administrator maintains under the Plan.

(C) Plan Expenses. The Plan Administrator consistent with ERISA and Applicable Law must determine whether a particular Plan expense is a settlor expense which the Employer must pay.

(1) Employer election as to non-settlor expenses. The Employer will direct the Plan Administrator as to whether the Employer will pay any or all non-settlor reasonable Plan expenses or whether the Plan must bear the expense.

(2) Allocation of Plan expense. As to any and all non-settlor reasonable Plan expenses, including Trustee fees, which the Employer determines that the Plan will pay, the Plan Administrator has discretion: (i) to determine which of such expenses will be charged to the Plan as a whole and the method of allocating such Plan expenses under Section 7.04(C)(2)(a); (ii) to determine which of such expenses the Plan will charge to an individual Participant's Account under Section 7.04(C)(2)(b); and (iii) to adopt an expense policy regarding the foregoing. The Plan Administrator must exercise its discretion under this Section 7.04(C)(2) in a reasonable, uniform and nondiscriminatory manner. The Plan Administrator will direct the Trustee to pay from the Trust and to charge to the overall Plan or to particular Participant Accounts the expenses under this Section 7.04(C)(2) in accordance with the Plan Administrator's election of expense charging method or policy.

(a) Charge to overall Plan (pro rata or per capita). If the Plan Administrator charges a Plan expense to the Accounts of all Participants, the Plan Administrator may allocate the Plan expense either pro rata in relation to the total balance in each Account on the date the expense is allocated (using the balance determined as of the most recent Valuation Date) or per capita (an equal amount) to each Participant's Account.

(b) Charge to individual Participant Accounts. The Plan Administrator, except as prohibited by Applicable Law, may charge a Participant's Account for any reasonable Plan expenses directly related to that Account, including, but not limited to the following categories of fees or expenses: distribution, loan,

acceptance of rollover, QDRO, "lost Participant" search, account maintenance, brokerage accounts, investment management and benefit calculations. The Plan Administrator may charge a Participant's Account for the reasonable expenses incurred in connection with the maintenance of or a distribution from that Account even if the charging of such expenses would result in the elimination of the Participant's Account or in the Participant's not receiving an actual distribution. However, if the actual Account expenses exceed the Participant's Account Balance, the Plan Administrator will not charge the Participant outside of the Plan for such excess expenses.

(c) **Participant's direct payment of investment expenses.** The Plan Administrator may permit Participants to pay directly to the service provider, outside the Plan, Plan expenses such as investment management fees, provided such expenses: (i) would be properly payable either by the Employer or the Plan and are not "settlor" expenses payable exclusively by the Employer; (ii) are not paid by the Employer or by the Plan; and (iii) are not intrinsic to the value of the Plan assets as described in Rev. Rul. 86-142 or in any successor ruling. This Section 7.04(C)(2)(c) does not permit a Participant to reimburse the Plan for expenses the Plan previously has paid. To the extent a Participant does not pay an expense the Participant may pay according to this Section 7.04(C)(2)(c), the Plan Administrator will charge the expense under Sections 7.04(C)(2)(a) or 7.04(C)(2)(b) in accordance with the Plan Administrator's expense policy.

(d) **Charges to former Employee-Participants.** The Plan Administrator may charge reasonable Plan expenses to the Accounts of former Employee-Participants, even if the Plan Administrator does not charge Plan expenses to the Accounts of current Employee-Participants. The Plan Administrator may charge the Accounts of former Employee-Participants by applying one of the Section 7.04(C)(2)(a) or (b) methods.

(e) **ERISA compliance.** This Section 7.04(C) does not authorize the Plan to charge a Participant for information that ERISA requires the Plan to furnish free of charge upon the Participant's request. In addition, the Plan Administrator as ERISA or other Applicable Law may require, must disclose the nature of any Plan expenses and the manner of charging of any Plan expenses to the Plan or to particular Participant Accounts and must apply its expense policy in a manner which is consistent with ERISA and other Applicable Law.

7.05 PARTICIPANT ADMINISTRATIVE PROVISIONS.

(A) **Beneficiary Designation.** A Participant from time to time may designate, in writing, any person(s) (including a trust or other entity), contingently or successively, to whom the Trustee will pay all or any portion of the Participant's Vested Account Balance (including any life insurance proceeds payable to the Participant's Account) in the event of death. A Participant under Section 6.03(B)(1) also may designate the method of distribution of his/her Account to the Beneficiary. The Plan Administrator will prescribe the form for the Participant's written designation of Beneficiary and, upon the Participant's proper completion and filing of

the form with the Plan Administrator, the form effectively revokes all designations filed prior to that date by the same Participant. This Section 7.05(A) also applies to the interest of a deceased Beneficiary or a deceased alternate payee where the Beneficiary or alternate payee has designated a Beneficiary.

(1) **Automatic revocation of spousal designation.** A divorce decree, or a decree of legal separation, revokes the Participant's prior designation, if any, of his/her spouse or former spouse as his/her Beneficiary under the Plan unless: (a) a QDRO provides otherwise; or (b) the Employer in Appendix B elects otherwise. This Section 7.05(A)(1) applies solely to a Participant whose divorce or legal separation becomes effective on or after the date the Employer executes this Plan unless: (i) the Plan is a Restated Plan and the prior Plan contained a provision to the same effect; or (ii) regardless of the application of (i), the Employer in Appendix A provides for a special Effective Date for this Section 7.05(A)(1).

(2) **Coordination with QJSA/QPSA requirements.** If Section 6.04 applies to the Participant, this Section 7.05 does not impose any special spousal consent requirements on the Participant's Beneficiary designation unless the Participant waives the QJSA or QPSA benefit. If the Participant waives the QJSA or QPSA benefit without spousal consent to the Participant's Beneficiary designation: (a) any waiver of the QJSA or of the QPSA is not valid; and (b) if the Participant dies prior to his/her Annuity Starting Date, the Participant's Beneficiary designation will apply only to the portion of the death benefit which is not payable as a QPSA. Regarding clause (b), if the Participant's surviving spouse is a primary Beneficiary under the Participant's Beneficiary designation, the Trustee will satisfy the spouse's interest in the Participant's death benefit first from the portion which is payable as a QPSA.

(3) **Profit Sharing Plan exception.** If the Plan is a Profit Sharing Plan which the Employer under Section 6.04(G) has elected in its Adoption Agreement to exempt all Exempt Participants from the QJSA and QPSA requirements of Section 6.04, the Beneficiary designation of a married Exempt Participant, as described in Section 6.04(G), is not valid unless the Participant's spouse consents (in a manner described in Section 6.04(A)(7)) to the Beneficiary designation. The spousal consent requirement in this Section 7.05(A)(3) does not apply if the Participant's spouse is the Participant's sole primary Beneficiary. The Employer in its Adoption Agreement will elect whether to apply the "one-year marriage rule". If the Employer elects to apply the one-year marriage rule, the spousal consent requirement of this Section 7.05(A)(3) does not apply unless the Exempt Participant and his/her spouse were married throughout the one year period ending on the date of the Participant's death. If the Employer elects to apply the one-year marriage rule under this Section 7.05(A)(3), but the Participant is not an Exempt Participant (such that the QJSA and QPSA requirements apply to the Participant), the one-year marriage rule under Section 6.04(B) applies to the QPSA.

(4) Limitation on frequency of Designated Beneficiary changes. A Participant may change his/her Designated Beneficiary in accordance with this Section 7.05(A) as often as the Participant wishes, unless the Employer in Appendix B elects to impose a minimum time interval between changes, but with an exception for certain major life events, such as death of a Beneficiary, divorce and other such events as the Plan Administrator reasonably may determine.

(5) Definition of spouse. The Employer in Appendix B may define the term "spouse" for all Plan purposes provided such definition is consistent with Applicable Law. In the absence of such an Appendix B definition, the Plan Administrator will interpret and apply the term "spouse" in a manner which is consistent with Applicable Law.

(B) Default Beneficiary. If: (i) a Participant fails to name a Beneficiary in accordance with Section 7.05(A); or (ii) the Beneficiary (and all contingent or successive Beneficiaries) whom the Participant designates predecease the Participant, are invalid for any reason, or disclaim the Participant's Vested Account Balance and the Plan Administrator has accepted the disclaimers as valid under Applicable Law, then the Trustee (subject to any contrary provision in Appendix B under Section 7.05(C)) will distribute the Participant's Vested Account Balance in accordance with Section 6.03 in the following order of priority to:

(1) Spouse. The Participant's surviving spouse (without regard to the one-year marriage rule of Sections 6.04(B) and 7.05(A)(3)); and if no surviving spouse to

(2) Descendants. The Participant's children (including adopted children), in equal shares by right of representation (one share for each surviving child and one share for each child who predeceases the Participant with living descendants); and if none to

(3) Parents. The Participant's surviving parents, in equal shares; and if none to

(4) Estate. The Participant's estate.

(C) Administration of Default Provision. The Employer in Appendix B may specify a different list or ordering of the list of default beneficiaries than under Section 7.05(B); provided however, that if the Plan is a Profit Sharing Plan, and the Plan includes Exempt Participants, as to such Exempt Participants, the Employer may not specify a different default Beneficiary list or order unless the Participant's surviving spouse will be the sole primary Beneficiary. The Plan Administrator will direct the Trustee as to the distribution method and to whom the Trustee will make the distribution under Section 7.05(B).

(D) Death of Beneficiary. If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Vested Account Balance, the Trustee will distribute the remaining Vested Account Balance in the same manner as described in Section 7.05(B) and (C) (applied as though the Beneficiary were the Participant) unless: (1) the Participant's Beneficiary designation provides otherwise; or (2) the Beneficiary has properly designated a beneficiary. A Beneficiary only may designate a beneficiary for the Participant's Account Balance remaining at the

Beneficiary's death if the Participant has not previously designated a successive contingent beneficiary and the Beneficiary's designation otherwise complies with the Plan terms.

(E) Simultaneous Death of Participant and Beneficiary. If a Participant and his/her Beneficiary should die simultaneously, or under circumstances that render it difficult or impossible to determine who predeceased the other, then unless the Participant's Beneficiary designation otherwise specifies, the Plan Administrator will presume conclusively that the Beneficiary predeceased the Participant.

(F) Incapacitated Participant or Beneficiary. If, in the opinion of the Plan Administrator, a Participant or Beneficiary entitled to a Plan distribution is not able to care for his/her affairs because of a mental condition, a physical condition, or by reason of age, at the direction of the Plan Administrator, the Trustee will make the distribution to the Participant's or Beneficiary's guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his/her attorney-in-fact or to other legal representative, upon furnishing evidence of such status satisfactory to the Plan Administrator and to the Trustee. The Plan Administrator and the Trustee do not have any liability with respect to payments so made and neither the Plan Administrator nor the Trustee has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

(G) Assignment or Alienation. Except as provided in Code §414(p) relating to QDROs (or a domestic relations order entered into before January 1, 1985) and in Code §401(a)(13) relating to certain voluntary, revocable assignments, judgments and settlements, neither a Participant nor a Beneficiary may anticipate, assign or alienate (either at law or in equity) any benefit provided under the Plan, and the Trustee will not recognize any such anticipation, assignment or alienation. Except as provided by Code §401(a)(13) or other Applicable Law, a benefit under the Plan is not subject to attachment, garnishment, levy, execution or other legal or equitable process.

(H) Information Available. Any Participant or Beneficiary without charge may examine the Plan description, copy of the latest annual report, any bargaining agreement, this Plan and Trust, and any contract or any other instrument which relates to the establishment or administration of the Plan or Trust. The Plan Administrator will maintain all of the items listed in this Section 7.05(H) in its office, or in such other place or places as it may designate from time to time in order to comply with ERISA, for examination during reasonable business hours. Upon the written request of a Participant or a Beneficiary, the Plan Administrator must furnish the Participant or Beneficiary with a copy of any item listed in this Section 7.05(H). The Plan Administrator may impose a reasonable copying charge upon the requesting person.

(I) Claims Procedure for Denial of Benefits. A Participant or a Beneficiary may file with the Plan Administrator a written claim for benefits, if the Participant or the Beneficiary disputes the Plan Administrator's determination regarding the Participant's or Beneficiary's

Plan benefit. However, the Plan will distribute only such Plan benefits to Participants or Beneficiaries as the Plan Administrator in its discretion determines a Participant or Beneficiary is entitled to receive. The Plan Administrator will maintain a separate written document as part of (or which accompanies) the Plan's summary plan description explaining the Plan's claims procedure. This Section 7.05(I) specifically incorporates the written claims procedure as from time to time published by the Plan Administrator as a part of the Plan. If the Plan Administrator pursuant to the Plan's written claims procedure makes a final written determination denying a Participant's or Beneficiary's benefit claim, the Participant or Beneficiary to preserve the claim must file an action with respect to the denied claim not later than 180 days following the date of the Plan Administrator's final determination.

(J) Inability to Determine Beneficiary. In the event that the Plan Administrator is unable to determine the identity of a Participant's Beneficiary under circumstances of competing claims or otherwise, the Plan Administrator may file an interpleader action seeking an order of the court as to the determination of the Beneficiary. The Plan Administrator, the Trustee and other Plan fiduciaries may act in reliance upon any proper order issued under this Section 7.05(J) in maintaining, distributing or otherwise disposing of a Participant's Account under the Plan terms, to any Beneficiary specified in the court's order.

7.06 PLAN LOANS.

(A) Loan Policy. The Plan Administrator, at any time and in its sole discretion, may establish, amend or terminate a policy which the Trustee must observe in making Plan loans, if any, to Participants and to Beneficiaries. If the Plan Administrator adopts a loan policy, the loan policy must be nondiscriminatory and must be in writing. The policy must include: (1) the identity of the person or positions authorized to administer the Participant loan program; (2) the procedure for applying for a loan; (3) the criteria for approving or denying a loan; (4) the limitations, if any, on the types and amounts of loans available; (5) the procedure for determining a reasonable rate of interest; (6) the types of collateral which may secure the loan; and (7) the events constituting default and the steps the Plan will take to preserve Plan assets in the event of default. A loan policy the Plan Administrator adopts under this Section 7.06(A) is part of the Plan, except that the Plan Administrator may amend or terminate the policy without regard to Section 11.02.

(B) Requirements for Plan Loans. The Trustee, as directed by the Plan Administrator will make a Plan loan to a Participant or to a Beneficiary in accordance with the loan policy, under Section 7.06(A), provided: (1) loans are available to all Participants and Beneficiaries on a reasonably equivalent basis and are not available in a greater amount for HCEs than for NHCEs; (2) any loan is adequately secured and bears a reasonable rate of interest; (3) the loan provides for repayment within a specified time (except that the loan policy may suspend loan payments pursuant to Code §414(u)(4) or otherwise in accordance with Applicable Law); (4) the default provisions of the note permit offset of the Participant's Vested Account Balance only at the time when the Participant has a distributable

event under the Plan, but without regard to whether the Participant consents to distribution as otherwise may be required under Section 6.01(A)(2); (5) the amount of the loan does not exceed (at the time the Plan extends the loan) the present value of the Participant's Vested Account Balance; and (6) the loan otherwise conforms to the exemption provided by Code §4975(d)(1).

(C) Default as Distributable Event. The loan policy may provide a Participant's loan default is a distributable event with respect to the defaulted amount, irrespective of whether the Participant otherwise has incurred a distributable event at the time of default, except as to Restricted 401(k) Accounts or Restricted Pension Accounts under Section 6.01(C)(4) which the Participant used to secure his/her loan and which are not then distributable at the time of default. See Section 6.06.

(D) QJSA/QPSA Requirements. If the QJSA/QPSA requirements of Section 6.04 apply to the Participant, the Participant may not pledge any portion of his/her Account Balance that is subject to such requirements as security for a loan unless, within the 90 day period ending on the date the pledge becomes effective, the Participant's spouse, if any, consents (in a manner described in Section 6.04 other than the requirement relating to the consent of a subsequent spouse) to the security or, by separate consent, to an increase in the amount of security. See Section 6.04(D) regarding the affect of an outstanding loan pledge on the QJSA or QPSA benefit.

(E) Treatment of Loan as Participant-Directed. The Plan Administrator, to the extent provided in a written loan policy and consistent with Section 7.03(B)(3), will treat a Plan loan made to a Participant as a Participant-directed investment, even if the Plan otherwise does not permit a Participant to direct his/her Account investments. Where a loan is treated as a directed investment, the borrowing Participant's Account alone shares in any interest paid on the loan, and the Account alone bears any expense or loss it incurs in connection with the loan. The Trustee may retain any principal or interest paid on the borrowing Participant's loan in a Segregated Account (as described in Section 7.04(A)(2)(c)) on behalf of the borrowing Participant until the Trustee (or the Named Fiduciary, in the case of a nondiscretionary Trustee) deems it appropriate to add the loan payments to the Participant's Account under the Plan.

7.07 LOST PARTICIPANTS. If the Plan Administrator is unable to locate any Participant or Beneficiary whose Account becomes distributable under the Plan or if the Plan has made a distribution, but the Participant for any reason does not cash the distribution check (a "lost Participant"), the Plan Administrator will apply the provisions of this Section 7.07. The provisions of this Section 7.07 no longer apply if the Plan Administrator, prior to taking action to dispose of the lost Participant's Account under Section 7.07(A)(2) or 7.07(B)(2), is able to complete the distribution.

(A) Ongoing Plan. The provisions of this Section 7.07(A) apply if the Plan is ongoing.

(1) Attempt to Locate. The Plan Administrator must conduct a reasonable and diligent search for the Participant, using one or more of the search methods described in Section 7.07(C).

(2) Failure to locate/disposition of Account. If a lost Participant remains unlocated after 6 months following the date the Plan Administrator first attempts to locate the lost Participant using any of the search methods described in Section 7.07(C), the Plan Administrator may forfeit the lost Participant's Account, provided the Account is not subject to the Automatic Rollover rules of Section 6.08(D), unless forfeiture is contrary to Applicable Law. If the Plan Administrator forfeits the lost Participant's Account, the forfeiture occurs at the end of the above-described 6-month period and the Plan Administrator will allocate the forfeiture in accordance with Section 3.07. The Plan Administrator under this Section 7.07(A)(2) will forfeit the entire Account of the lost Participant, including Elective Deferrals and Employee Contributions.

(3) Subsequent restoration of forfeiture. If a lost Participant whose Account was forfeited thereafter at any time but before the Plan has been terminated makes a claim for his/her forfeited Account, the Plan Administrator will restore the forfeited Account to the same dollar amount as the amount forfeited, unadjusted for Earnings occurring subsequent to the forfeiture. The Plan Administrator will make the restoration in the Plan Year in which the lost Participant makes the claim, first from the amount, if any, of Participant forfeitures the Plan Administrator otherwise would allocate for the Plan Year, and then from the amount or additional amount the Employer contributes to the Plan for the Plan Year. The Employer in Appendix B may provide that the Plan Administrator will use Trust Fund Earnings for the Plan Year, if any, as a source of the restoration, or may modify the order of priority of the sources of restoration described in the previous sentence. The Plan Administrator will distribute the restored Account to the lost Participant not later than 60 days after the close of the Plan Year in which the Plan Administrator restores the forfeited Account.

(B) Terminating plan. The provisions of this Section 7.07(B) apply if the Plan is terminating.

(1) Attempt to locate. The Plan Administrator, to attempt to locate a lost Participant when the plan is terminating, must conduct a reasonable and diligent search for the Participant, using all four search methods described in clauses (1) through (4) of Section 7.07(C). In addition, the Plan Administrator may use a search method described in clause (5) of Section 7.07(C).

(2) Failure to locate/disposition of Account. If a lost Participant remains unlocated after a reasonable period the Plan Administrator will distribute the Participant's Account under Sections 7.07(B)(2)(a), (b) or (c) as applicable.

(a) No Annuity Contract/no other Defined Contribution Plan. If the terminating Plan does not provide for an Annuity Contract as a method of distribution and the Employer does not maintain another Defined Contribution Plan, the Plan Administrator will distribute the lost Participant's Account in an Automatic Rollover to an individual retirement plan under Section 6.08(D), unless

the Plan Administrator determines it is impractical to complete an Automatic Rollover or is unable to locate an individual retirement plan provider willing to accept the rollover distribution. In such event, the Plan Administrator may: (i) distribute the Participant's Account to an interest-bearing insured bank account the Plan Administrator establishes in the Participant's name; or (ii) distribute the Participant's Account to the unclaimed property fund of the state of the Participant's last known address.

(b) Plan provides Annuity Contract/no other Defined Contribution Plan. If the terminating Plan provides for an Annuity Contract as a method of distribution and the Employer does not maintain another Defined Contribution Plan, the Plan Administrator will purchase an Annuity Contract payable to the lost Participant for delivery to the Participant's last known address reflected in the Plan's records.

(c) Employer maintains another Defined Contribution Plan. If the Employer maintains another Defined Contribution Plan, the Plan Administrator may, in lieu of taking the actions described in Sections 7.07(B)(2)(a) or (b), transfer the lost Participant's Account to the other Defined Contribution Plan.

(C) Search methods. The search methods described in this Section 7.07 are: (1) provide a distribution notice to the lost Participant at the Participant's last known address by certified or registered mail; (2) check with other employee benefit plans of the Employer that may have more up-to-date information regarding the Participant's whereabouts; (3) identify and contact the Participant's designated Beneficiary under Section 7.05; (4) use the IRS letter forwarding program under Rev. Proc. 94-22 or the Social Security Administration search program; and (5) use a commercial locator service, credit reporting agencies, the internet or other search method. Regarding search methods (2) and (3) above, if the Plan Administrator encounters privacy concerns, the Plan Administrator may request that the Employer or other plan fiduciary (under (2)), or the designated Beneficiary (under (3)), contact the Participant or forward a letter requesting that the Participant contact the Plan Administrator.

(D) Uniformity. The Plan Administrator will apply Section 7.07 in a reasonable, uniform and nondiscriminatory manner, but in determining a specific course of action as to a particular Account, reasonably may take into account differing circumstances such as the amount of a lost Participant's Account, the expense in attempting to locate a lost Participant, the Plan Administrator's ability to establish and the expense of establishing a rollover IRA, and other factors.

(E) Expenses of search. The Plan Administrator, in accordance with Section 7.04(C)(2)(b), may charge to the Account of a Participant the reasonable expenses incurred under this Section 7.07 and which are associated with the Participant's Account, without regard to whether or when the Plan Administrator actually locates or makes a distribution to the Participant.

(F) Alternative Disposition. The Plan Administrator under Sections 7.07(A) or (B) operationally may dispose of a lost Participant's Account in any reasonable manner which is not inconsistent with Applicable Law. The Plan Administrator may adopt a policy under this Section 7.07 as it deems reasonable or appropriate to administer the Accounts of lost Participants, provided that: (1) the terms of any such policy must be uniform and nondiscriminatory; (2) the Plan Administrator must administer the policy in a uniform and nondiscriminatory manner; and (3) the policy must not be inconsistent with Applicable Law. The Plan Administrator also may administer lost Participant Accounts consistent with Applicable Law which is contrary to any provision of Section 7.07, unless such Applicable Law requires a Plan amendment, in which case the Employer within any required deadline will amend the Plan to comply.

7.08 PLAN CORRECTION. The Plan Administrator, in conjunction with the Employer and Trustee, as applicable, may undertake such correction of Plan failures as the Plan Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code §401(a), to correct a fiduciary breach under ERISA or to unwind (correct) a prohibited transaction under the Code or ERISA. Without limiting the Plan Administrator's authority under the prior sentence, the Plan Administrator, as it determines to be reasonable and appropriate, may undertake or assist the Employer in undertaking correction of Plan document, operational, demographic and employer eligibility failures under a method described in the Plan or under the Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. The Plan Administrator, as it determines to be reasonable and appropriate, also may undertake or assist the Employer, the Trustee or other appropriate Plan fiduciary or Plan official in undertaking correction of a fiduciary breach, including correction under the Voluntary Fiduciary Correction Program ("VFCP") or any successor program to VFCP. If the Plan is a 401(k) Plan, the Plan Administrator to correct an operational failure other than a failure of Code §415 or Code §402(g) limitations or a failure of the ADP or ACP tests (or to correct such listed failures beyond the time permitted under regulations), may require the Trustee to distribute from the Plan Elective Deferrals, including Earnings thereon, and the Plan Administrator will treat any Matching Contributions and Earnings thereon relating to the distributed Elective Deferrals, as an Associated Matching Contribution under Section 3.07(A)(1).

7.09 PROTOTYPE/VOLUME SUBMITTER PLAN STATUS. If the Plan fails initially to qualify or to maintain qualification or if the Employer makes any amendment or modification to a provision of the Plan (other than a proper completion of an elective provision under the Adoption Agreement or an Appendix), the Employer no longer may participate under this Prototype or Volume Submitter Plan. The Employer also may not participate (or continue to participate) in this Prototype or Volume Submitter Plan if the Trustee or Custodian is not the Sponsor or Practitioner and does not have the written consent of the Sponsor or Practitioner required under Section 1.65, if any, to serve in the capacity of Trustee or Custodian. If the Employer is not entitled to participate under this Prototype or Volume Submitter Plan, the Plan is an individually-designed plan and the reliance procedures specified in the applicable Adoption Agreement no longer apply.

7.10 PLAN COMMUNICATIONS, INTERPRETATION, AND CONSTRUCTION.

(A) Plan Administrator's Discretion/Nondiscriminatory Administration. The Plan Administrator has total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Plan Administrator makes under the Plan is final and binding upon any affected person. The Plan Administrator must exercise all of its Plan powers and discretion, and perform all of its duties in a uniform and nondiscriminatory manner.

(B) Written Communications. All Plan-related communications by any party must be in writing (which subject to Section 7.10(C) may include an electronic communication). All Participant or Beneficiary notices, designations, elections, consents or waivers must be made in a form the Plan Administrator (or, as applicable, the Trustee) specifies or otherwise approves. Any person entitled to notice under the Plan may waive the notice or shorten the notice period unless such actions are contrary to Applicable Law.

(C) Use of Electronic Media. The Plan Administrator using any electronic medium may give or receive any Plan notice, communicate any Plan policy, conduct any written Plan communication, satisfy any Plan filing or other compliance requirement and conduct any other Plan transaction to the extent permissible under Applicable Law. A Participant or a Participant's spouse, to the extent authorized by the Plan Administrator, may use any electronic medium to provide any Beneficiary designation, election, notice, consent or waiver under the Plan, to the extent permissible under Applicable Law. Any reference in this Plan to a "form," a "notice," an "election," a "consent," a "waiver," a "designation," a "policy" or to any other Plan-related communication includes an electronic version thereof as permitted under Applicable Law.

(D) Evidence. Anyone, including the Employer, required to give data, statements or other information relevant under the terms of the Plan ("evidence") may do so by certificate, affidavit, document or other form which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Plan Administrator and the Trustee are protected fully in acting and relying upon any evidence described under the immediately preceding sentence.

(E) Plan Terms Binding. The Plan is binding upon the Employer, Trustee, Plan Administrator, Custodian (and all other service providers to the Plan), upon Participants, Beneficiaries and all other persons entitled to benefits, and upon the successors and assigns of the foregoing persons. See Section 8.11(C) as to the Trust where the Employer in its Adoption Agreement elects to use a separate trust agreement.

(F) Employment Not Guaranteed. Nothing contained in this Plan, or with respect to the establishment of the Trust, or any modification or any amendment to the Plan or Trust,

or in the creation of any Account, or with respect to the payment of any benefit, gives any Employee, Participant or any Beneficiary any right to employment or to continued employment by the Employer, or any legal or equitable right against the Employer, the Trustee, the Plan Administrator or any employee or agent thereof, except as expressly provided by the Plan, the Trust, or Applicable Law.

(G) Word Usage. Words used in the masculine also apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural includes the singular and the singular includes the plural. Titles of Plan and Adoption Agreement sections are for reference only.

(H) State Law. The law of the state of the Employer's principal place of business will determine all questions arising with respect to the provisions of the Plan and Trust, except to the extent superseded by Applicable Law. The Employer in Appendix B and subject to Applicable Law, may elect to apply the law of another state or appropriate legal jurisdiction.

(I) Parties to Litigation. Except as otherwise provided by Applicable Law, a Participant or a Beneficiary is not a necessary party or required to receive notice of process in any court proceeding involving the Plan, the Trust Fund or any fiduciary of the Plan. Any final judgment (not subject

to further appeal) entered in any such proceeding will be binding upon the Employer, the Plan Administrator, the Trustee, Custodian, Participants and Beneficiaries and upon their successors and assigns.

(J) Fiduciaries Not Insurers. The Trustee, the Plan Administrator and the Employer in no way guarantee the Trust Fund from loss or depreciation. The Employer does not guarantee the payment of any money which may be or becomes due to any person from the Trust Fund. The liability of the Employer, the Plan Administrator and the Trustee to make any distribution from the Trust Fund at any time and all times is limited to the then available assets of the Trust.

(K) Construction/Severability. The Plan, the Adoption Agreement, the Trust and all other documents to which they refer, will be interpreted consistent with and to preserve tax qualification of the Plan under Code §401(a) and tax exemption of the Trust under Code §501(a) and also consistent with ERISA and other Applicable Law. To the extent permissible under Applicable Law, any provision which a court (or other entity with binding authority to interpret the Plan) determines to be inconsistent with such construction and interpretation, is deemed severed and is of no force or effect, and the remaining Plan terms will remain in full force and effect.

**ARTICLE VIII
TRUSTEE AND CUSTODIAN, POWERS AND DUTIES**

8.01 **ACCEPTANCE.** By its signature on the Adoption Agreement, the Trustee or Custodian accepts the Trust created under the Plan and agrees to perform the obligations the Plan imposes on the Trustee or Custodian.

8.02 **INVESTMENT POWERS AND DUTIES.**

(A) Discretionary Trustee Powers. If the Employer in its Adoption Agreement designates the Trustee as a discretionary Trustee, then the Trustee has full discretion and authority with regard to the investment of the Trust Fund, except as to a Plan asset: (i) properly under the control or the direction of an Investment Manager, ancillary trustee or other Plan fiduciary; (ii) subject to proper Employer or Named Fiduciary direction of investment; or (iii) subject to proper Participant direction of investment. The Trustee is authorized and empowered, but not by way of limitation, with the following powers:

(1) General powers. To invest consistent with and subject to Applicable Law any part or all of the Trust Fund in any common or preferred stocks, open-end or closed-end mutual funds (including proprietary funds), put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, to buy or sell options on common stock on a nationally recognized exchange with or without holding the underlying common stock, to open and to maintain margin accounts, to engage in short sales, to buy and sell commodities, commodity options and contracts for the future delivery of commodities, and to make any other investments the Trustee deems appropriate.

(2) Cash/liquidity. To retain in cash so much of the Trust Fund as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest or without interest if the Trustee determines that such deposits are reasonable or necessary to facilitate a Plan transaction or for other purposes, but consistent with the Trustee's duties under Section 8.02(C).

(3) Trustee's common/collective funds. To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a state, in any type of deposit of the Trustee (or of a bank related to the Trustee within the meaning of Code §414(b)) at a reasonable rate of interest or in a common trust fund, as described in Code §584, or in a collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, which the Trustee (or its affiliate, as defined in Code §1504) maintains exclusively for the collective investment of money contributed by the bank (or the affiliate) in its capacity as Trustee and which conforms to the rules of the Comptroller of the Currency.

(4) Transact in real/personal property. To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee decides.

(5) Borrowing. To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge.

(6) Claims. To compromise, contest, arbitrate or abandon claims and demands affecting the investment of Trust assets, in the Trustee's discretion. However, nothing in this Section 8.02(A)(6) requires a Participant or Beneficiary to arbitrate any claim under the Plan.

(7) Voting/tender/exercise. To have with respect to the Trust all of the rights of an individual owner, including the power to exercise any and all voting rights associated with Trust assets, to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, to tender shares and to exercise or sell stock subscriptions or conversion rights.

(8) Mineral rights. To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interests in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders.

(9) Title. To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship. However, any securities held in a nominee or street name must be held on behalf of the Plan by: (a) a bank or trust company that is subject to supervision by the United States or a State or a nominee of such bank or trust company; (b) a broker or dealer registered under the Securities Exchange Act of 1934 or a nominee of such broker or dealer; or (c) a clearing agency as defined in Securities Exchange Act of 1934, Section 3(a)(23), or its nominee.

(10) Hold pending dispute resolution. To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes final adjudication.

(11) Litigation. To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except the Trustee is not obliged nor required to do so unless indemnified to its satisfaction.

(12) Agents/reliance. The Trustee may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee

reasonably may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may act reasonably or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

(13) Employer stock/real property. The Trustee (or as applicable, Investment Manager, Employer or Participant) may invest in qualifying Employer securities or in qualifying Employer real property, as defined in and as limited by ERISA.

(a) Profit Sharing Plans/401(k) Plans. If the Employer's Plan is a Profit Sharing Plan or a 401(k) Plan, the aggregate investments in (acquisitions and holdings of) qualifying Employer securities and in qualifying Employer real property may comprise up to 100% of the value of Plan assets, unless the Employer in Appendix B elects to restrict such investments to 10% of the value of Plan assets determined immediately after the acquisition (or to some other percentage of value which is less than 100%). Notwithstanding the foregoing, except where permitted under ERISA §407(b)(2), if the Plan includes a 401(k) arrangement, a Participant's Elective Deferral Account accumulated in Plan Years beginning after December 31, 1998, including earnings thereon, may not be invested more than 10% by value in qualifying employer securities and qualifying employer real property, unless such investments are directed by the Participant or the Participant's Beneficiary.

(b) Voting/distribution. If the Plan invests in qualifying Employer securities, the Plan Administrator may adopt a uniform and nondiscriminatory policy providing for the exercise of voting rights, distribution restrictions, repurchase, put, call or right of first refusal rules, or other rights and restrictions affecting the qualifying Employer securities. Any such policy may not be contrary to Applicable Law.

(14) Orphaned plan. If the Trustee in accordance with Applicable Law determines that the Employer has abandoned the Plan, the Trustee (if qualified to so act) may appoint itself as a Qualified Termination Administrator ("QTA") under Section 11.05(B) for purposes of terminating the Plan and distributing all Plan Accounts. As a QTA, the Trustee may undertake all acts authorized under Applicable Law to wind-up the Plan, including causing the Trust to pay from Trust assets to the QTA and to other service providers a reasonable fee for services rendered.

(15) Catch-all. To perform any and all other acts which in the Trustee's judgment are necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust and which are not contrary to Applicable Law.

(B) Nondiscretionary (directed) Trustee/Custodian Powers. The Employer in its Adoption Agreement may designate the Trustee as a nondiscretionary Trustee. The Employer in its Adoption Agreement in addition to designating a discretionary or nondiscretionary Trustee, may appoint a Custodian to hold all or any portion of the Trust Assets. Except as otherwise provided herein: (i) a

Custodian has all of the same powers and duties as a nondiscretionary Trustee; (ii) the nondiscretionary Trustee or Custodian has all of the same powers as a discretionary Trustee in Section 8.02(A) except that the nondiscretionary Trustee or Custodian only may exercise such powers pursuant to a proper written direction; and (iii) the nondiscretionary Trustee or Custodian has all the same duties as a discretionary Trustee under Section 8.02(C). A "proper written direction" means the written direction of a Plan fiduciary or of a Participant with authority over the Trust asset which is the subject of the direction and which is consistent with the Plan terms and Applicable Law.

(1) Modification of powers/duties. The Employer and the nondiscretionary Trustee (or the Custodian) in a Nonstandardized Plan or Volume Submitter Adoption Agreement, on Appendix C may limit the powers or duties of the Custodian or the nondiscretionary Trustee to any combination of powers under Section 8.02(A) and to any combination of duties under Section 8.02(C) or otherwise may amend the Trust as described in Section 8.11.

(2) Limited responsibility. If there is a Custodian or a nondiscretionary Trustee under the Plan, then the Employer, in adopting this Plan, acknowledges and agrees:

(a) No discretion over Trust assets. The nondiscretionary Trustee or Custodian does not have any discretion as to the investment or the re-investment of the Trust Fund and the nondiscretionary Trustee or Custodian is acting solely as a directed fiduciary as to the assets comprising the Trust Fund.

(b) No review or recommendations. The nondiscretionary Trustee or the Custodian does not have any duty to review or to make recommendations regarding investments made pursuant to a proper written direction, except in accordance with Applicable Law.

(c) No action unless direction. The nondiscretionary Trustee or the Custodian must retain any investment obtained upon a proper written direction until receipt of another proper written direction to dispose of such investment, except as may be contrary to Applicable Law.

(d) No liability for following orders. The nondiscretionary Trustee or the Custodian is not liable in any manner or for any reason for making, retaining or disposing of any investment pursuant to any proper written direction.

(e) Indemnity. The Employer will indemnify, defend and hold the nondiscretionary Trustee or the Custodian harmless from any damages, costs or expenses, including reasonable attorneys' fees, which the nondiscretionary Trustee or the Custodian may incur as a result of any claim asserted against the nondiscretionary Trustee, the Custodian or the Trust arising out of the nondiscretionary Trustee's or Custodian's full and timely compliance with any proper written direction.

(3) Limitation of powers of certain Custodians. If a Custodian is a bank which, under its governing state law, does not possess trust powers, then Sections 8.02(A)(1), (3)

as it relates to common trust funds or collective investment funds, Sections 8.02(A)(4), (5), (7), and (8), Section 8.09 and Article IX do not apply and the Custodian only has the power and the authority to exercise the remaining powers under Section 8.02(A) and to perform the duties under Section 8.02(C).

(4) **QTA.** Notwithstanding any other provision of this Section 8.02(B), a nondiscretionary Trustee or a Custodian, in accordance with Applicable Law, may serve as a QTA under Section 8.02(A)(14) without regard to receipt of any proper written direction.

(5) **Trustee references.** Except as the Plan or the context otherwise require, "Trustee" includes nondiscretionary Trustee and Custodian.

(C) Duties. The Trustee or Custodian has the following duties:

(1) **ERISA.** If ERISA applies to the Plan and to the extent that ERISA so requires, to act: (a) solely in the interest of Participants and Beneficiaries for the exclusive purposes of providing benefits under the Plan and defraying the reasonable expenses of Plan administration; (b) with the care, skill, prudence and diligence under the circumstances then prevailing as would a prudent person acting in a like capacity and familiar with such matters; (c) by diversifying Trust investments so as to minimize the risk of large losses unless not prudent under the circumstances to do so; and (d) in accordance with the Plan to the extent that the Plan is consistent with ERISA.

(2) **Investment policy.** To coordinate its investment policy with Plan financial needs as communicated to it by the Plan Administrator.

(3) **Trust accounting.** To furnish to the Employer and to the Plan Administrator an annual (or more frequently as required by Applicable Law) statement of account showing the condition of the Trust Fund and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts are conclusive on all persons, including the Employer and the Plan Administrator, except as to any act or transaction concerning which the Employer or the Plan Administrator files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts or for which ERISA authorizes a longer period within which to object. The Trustee also may agree with the Employer or Plan Administrator to provide the information described in this Section 8.02(C) more frequently than annually.

(4) **Trust valuation.** If the Trustee is a discretionary Trustee, to value the Trust Fund as of each Accounting Date to determine the fair market value of each Participant's Account Balance in the Trust. The Trustee also must value the Trust Fund on such other Valuation Dates as directed in writing by the Plan Administrator or as the Adoption Agreement or Applicable Law may require. If the Trustee is a nondiscretionary Trustee (or in the case of Trust assets held by a Custodian) the Named Fiduciary will value the assets and will provide the valuation to the

Trustee (Custodian) unless the Trustee (Custodian) and the Named Fiduciary agree that the Trustee (Custodian) will conduct the valuation. The Trustee (Custodian) may reasonably rely on any valuation the Named Fiduciary conducts and provides.

(5) **Distributions.** To credit and distribute the Trust Fund as the Plan Administrator directs. The Trustee is not obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee is accountable only to the Plan Administrator for any payment or distribution made by it in good faith on the order or direction of the Plan Administrator. The Trustee must promptly notify the Plan Administrator of any unclaimed Plan payment or distribution and then dispose of the distribution in accordance with the Plan Administrator's subsequent direction.

(6) **Fees/expenses.** To pay from the Trust Fund all reasonable Plan fees and expenses, and to allocate the fees and expenses to Plan Accounts, both as the Plan Administrator directs under Section 7.04(C)(2). Any fee or expense that the Employer pays, directly or indirectly, is not an Employer contribution to the Plan, provided the fee or the expense relates to the ordinary and necessary administration of the Trust Fund.

(7) **Loans.** To make loans to a Participant or to a Beneficiary in accordance with the Plan Administrator's direction under Section 7.06.

(8) **Records/statements.** To keep the Trustee's Plan records open to the inspection of the Plan Administrator and the Employer at all reasonable times and to permit the review or audit of such records from time to time by any person or persons as the Employer or Plan Administrator may specify in writing. The Trustee must furnish the Plan Administrator with whatever information relating to the Trust Fund the Plan Administrator considers necessary to perform its duties as Plan Administrator.

(9) **Tax returns.** To file all information and tax returns required of the Trustee under Applicable Law.

(10) **Incapacity.** To follow the direction of the Plan Administrator with regard to distributions in the latter's determination of any Participant or Beneficiary incapacity under Section 7.05(F). The Trustee also will provide any reasonable information and take any reasonable action that the Plan Administrator requests relating to a determination of incapacity or otherwise pertaining to the administration of the Account of any incapacitated person.

(11) **Bond.** The Trustee must provide a bond for the faithful performance of its duties under the Trust to the extent required by Applicable Law.

(D) Limitations Applicable to all Trustees.

(1) **Receipt of contributions.** The Trustee is accountable to the Employer for the Plan contributions made by the Employer, but the Trustee does not have any duty to ensure that the contributions received comply with

the provisions of the Plan. Except as may be required by Applicable Law, the Trustee is not obliged to collect any contributions from the Employer, nor is the Trustee obliged to ensure that funds deposited with it are deposited according to the provisions of the Plan.

(2) Co-fiduciary liability. Each fiduciary under the Plan is responsible solely for his/her or its own acts or omissions. A fiduciary does not have any liability for another fiduciary's breach of fiduciary responsibility with respect to the Plan and the Trust unless the fiduciary: (a) participates knowingly in or undertakes to conceal the breach; (b) has actual knowledge of the breach and fails to take reasonable remedial action to remedy the breach; or (c) through negligence in performing his/her or its own specific fiduciary responsibilities that give rise to fiduciary status, the fiduciary has enabled the other fiduciary to commit a breach of the latter's fiduciary responsibility.

(3) Limitation of Trustee liability.

(a) Apportionment of duties. The Named Fiduciary, the Trustee(s) and any properly appointed Investment Manager may execute a written agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the Investment Manager or Trustee(s) with respect to any part of the Trust Fund under the control of the Investment Manager or the Trustee(s).

(b) If Investment Manager. The Trustee is not liable for the acts or omissions of any Investment Manager the Named Fiduciary may appoint, nor is the Trustee under any obligation to invest or otherwise to manage any asset of the Trust Fund which is subject to the management of a properly appointed Investment Manager.

(c) If other appointed fiduciaries. The Trustee is not liable for the acts or omissions of any ancillary trustee or independent fiduciary properly appointed under Section 8.07. However, if a discretionary Trustee, pursuant to the delegation described in Section 8.07, appoints an ancillary trustee, the discretionary Trustee is responsible for the periodic review of the ancillary trustee's actions and must exercise its delegated authority in accordance with the terms of the Plan and in a manner consistent with ERISA.

(d) Indemnity. The Employer and any Trustee may execute a written agreement as a part of this Plan and which is not contrary to Applicable Law, delineating any indemnification agreement among the parties.

(E) Multiple Trustees.

(1) Majority decisions. If more than two persons act as Trustee, a decision of the majority of such persons controls with respect to any decision regarding the administration or the investment of the Trust Fund or of any portion of the Trust Fund with respect to which such persons act as Trustee. If there is more than one Trustee, the Trustees jointly will manage and control the assets of the Trust Fund (or those Trust assets as to which they act as Trustee).

(2) Allocation. Multiple Trustees may allocate among themselves specific responsibilities or obligations or

may authorize one or more of them, either individually or in concert, to exercise any or all of the powers granted to the Trustee, or to perform any or all of the duties assigned to the Trustee under Article VIII.

(3) Signature. The signature of only one Trustee is necessary to effect any transaction on behalf of the Trust (or as to those Trust assets as to which the signatory acts as Trustee).

8.03 NAMED FIDUCIARY.

(A) Definition of Named Fiduciary. See Section 1.36.

(B) Duty of Named Fiduciary. The Named Fiduciary under the Plan has the sole responsibility to control and to manage the operation and administration of the Plan. If the Named Fiduciary is also the Trustee, the Named Fiduciary is solely responsible for the management and the control of the Trust Fund, except Trust assets properly: (1) under the control or the direction of an Investment Manager, ancillary trustee or other Plan fiduciary; or (2) subject to Employer or Participant direction of investment.

(C) Appointment of Investment Manager. The Named Fiduciary may appoint an Investment Manager.

8.04 DISTRIBUTION OF CASH OR PROPERTY. The Trustee will make Plan distributions in the form of cash except where: (1) the required form of distribution is a QJSA or QPSA which has not been waived; (2) the Plan is a Restated Plan and under the prior Plan, distribution in the form of property ("in-kind distribution") is a Protected Benefit which the Employer has not eliminated by a Plan amendment under Section 11.02(C); (3) the Plan Administrator adopts a written policy which provides for in-kind distribution; or (4) the Employer is terminating the Plan, and in the reasonable judgment of the Trustee, some or all Plan assets, within a reasonable time for making final distribution of Plan assets, may not be liquidated to cash or may not be so liquidated without undue loss in value. The Plan Administrator's policy under clause (3) may restrict in-kind distributions to certain types of Trust investments or specify any other reasonable and nondiscriminatory condition or restriction applicable to in-kind distributions. Under clause (4), the Trustee will make Plan termination distributions to Participants and Beneficiaries in cash, in-kind or in a combination of these forms, in a reasonable and nondiscriminatory manner which may take into account the preferences of the distributees. All in-kind distributions will be made based on the current fair market value of the property, as determined by the Trustee, Custodian or Named Fiduciary.

8.05 TRUSTEE/CUSTODIAN FEES AND EXPENSES. A Trustee or a Custodian will receive reasonable compensation and reimbursement for reasonable Trust expenses actually incurred as Trustee or Custodian, as may be agreed upon from time to time by the Employer and the Trustee or the Custodian. No person who is receiving full pay from the Employer may receive compensation (except for reimbursement of Plan expenses) for services as Trustee or as Custodian. As the Plan Administrator directs following direction from the Employer under Section 7.04(C), such fees and expenses

will be paid by the Employer, or the Trustee or Custodian will charge the Trust for the fees or expenses. If, within a reasonable time after a Plan related fee or expense is incurred (or if within the time specified in any agreement between the Plan and the Trustee regarding payment of a fee or expense) the Plan Administrator does not communicate the Employer's decision regarding payment or if the Employer does not pay the fee or expense, the Trustee or Custodian may charge the Trust for such reasonable fees and expenses as are not settlor expenses.

8.06 THIRD PARTY RELIANCE. A person dealing with the Trustee is not obligated to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Plan. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and is not liable to any person in so acting. The certificate of the Trustee that it is acting in accordance with the Plan is conclusive in favor of any person relying on the certificate.

8.07 APPOINTMENT OF ANCILLARY TRUSTEE OR INDEPENDENT FIDUCIARY.

(A) Appointment. The Employer, in writing, may appoint any qualified person in any state to act as ancillary trustee with respect to a designated portion of the Trust Fund, subject to any consent required under Section 1.65. An ancillary trustee must acknowledge in a writing separate from the Employer's Adoption Agreement its acceptance of the terms and conditions of its appointment as ancillary trustee and its fiduciary status under ERISA.

(B) Powers. The ancillary trustee has the rights, powers, duties and discretion as the Employer may delegate, subject to any limitations or directions specified in the agreement appointing the ancillary trustee and to the terms of the Plan or of ERISA. The Employer may delegate its responsibilities under this Section 8.07 to a discretionary Trustee under the Plan (subject to the acceptance by such discretionary Trustee of that delegation), but the Employer may not delegate its responsibilities to a nondiscretionary Trustee or to a Custodian. The investment powers delegated to the ancillary trustee may include any investment powers available under Section 8.02. The delegated investment powers may include the right to invest any portion of the assets of the Trust Fund in a common trust fund, as described in Code §584, or in any collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, but only if the ancillary trustee is a bank or similar financial institution supervised by the United States or by a state and the ancillary trustee (or its affiliate, as defined in Code §1504) maintains the common trust fund or collective investment fund exclusively for the collective investment of money contributed by the ancillary trustee (or its affiliate) in a trustee capacity and which conforms to the rules of the Comptroller of the Currency. The Employer also may appoint as an ancillary trustee, the trustee of any group trust fund designated for investment pursuant to the provisions of Section 8.09.

(C) Resignation/Removal. The ancillary trustee may resign its position and the Employer may remove an ancillary trustee as provided in Section 8.08 regarding resignation and removal of the Trustee or Custodian. In the event of such resignation or removal, the Employer may appoint another ancillary trustee or may return the assets to the control and management of the Trustee.

(D) Independent Fiduciary. If the DOL requires engagement of an independent fiduciary to have control or management of all or a portion of the Trust Fund, the Employer will appoint such independent fiduciary, as directed by the DOL. The independent fiduciary will have the duties, responsibilities and powers prescribed by the DOL and will exercise those duties, responsibilities and powers in accordance with the terms, restrictions and conditions established by the DOL and, to the extent not inconsistent with ERISA, the terms of the Plan. The independent fiduciary must accept its appointment in writing and must acknowledge its status as a fiduciary of the Plan.

8.08 RESIGNATION AND REMOVAL.

(A) Resignation. The Trustee or the Custodian may resign its position by giving written notice to the Employer and to the Plan Administrator. The Trustee's notice must specify the effective date of the Trustee's resignation, which date must be at least 30 days following the date of the Trustee's notice, unless the Employer consents in writing to shorter notice.

(B) Removal. The Employer may remove a Trustee or a Custodian by giving written notice to the affected party. The Employer's notice must specify the effective date of removal which date must be at least 30 days following the date of the Employer's notice, except where the Employer reasonably determines a shorter notice period or immediate removal is necessary to protect Plan assets.

(C) Successor Appointment. In the event of the resignation or the removal of a Trustee, where no other Trustee continues to serve, the Employer must appoint a successor Trustee if it intends to continue the Plan. If two or more persons hold the position of Trustee, in the event of the removal of one such person, during any period the selection of a replacement is pending, or during any period such person is unable to serve for any reason, the remaining person or persons will act as the Trustee.

(1) Default Successor Trustee. If the Employer fails to appoint a successor Trustee as of the effective date of the Trustee resignation or removal and no other Trustee remains, the Trustee will treat the Employer as having appointed itself as Trustee and as having filed the Employer's acceptance of appointment as successor Trustee with the former Trustee. If state law prohibits the Employer from serving as successor Trustee, the appointed successor Trustee is the president of a corporate Employer, the managing partner of a partnership Employer, the managing member of a limited liability company Employer, the sole proprietor of a proprietorship Employer, or in the case of any other entity type, such other person with title and responsibilities similar to the foregoing.

(2) Default Successor Custodian. If the Employer removes and does not replace a Custodian, the Trustee will assume possession of Plan assets held by the former Custodian.

(D) Acceptance. Each successor Trustee succeeds its predecessor Trustee by accepting in writing its appointment as successor Trustee and by filing the acceptance with the former Trustee and the Plan Administrator without the signing or filing of any further statement.

(E) Outgoing Trustee. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, must execute all documents and must perform all acts necessary to vest the title to Plan assets of record in any successor Trustee. In addition, to the extent reasonably necessary for the ongoing administration of the Plan, at the request of the Plan Administrator and the successor Trustee, the resigning or removed Trustee must transfer records, provide information and otherwise cooperate in effecting the change of Trustees.

(F) Successor Powers. Each successor Trustee has and enjoys all of the powers, both discretionary and ministerial, conferred under the Plan upon its predecessor.

(G) No Liability for Predecessor. A successor Trustee is not personally liable for any act or failure to act of any predecessor Trustee, except as required under ERISA. With the approval of the Employer and the Plan Administrator, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without liability.

8.09 INVESTMENT IN GROUP TRUST FUND. The Employer, by adopting this Plan, specifically authorizes the Trustee to invest all or any portion of the assets comprising the Trust Fund in any group trust fund which at the time of the investment provides for the pooling of the assets of plans qualified under Code §401(a), including a group trust fund that also permits the pooling of qualified plan assets with assets of an individual retirement account that is exempt from taxation under Code §408(e) or assets of an eligible governmental plan under Code §457(b) that is exempt from taxation under Code §457(g). This authorization applies solely to a group trust fund exempt from taxation under Code §501(a) and the trust agreement of which satisfies the requirements of Revenue Ruling 81-100 (as modified and clarified by Revenue Ruling 2004-67), or any successor thereto. The provisions of the group trust fund agreement, as amended from time to time, are by this reference incorporated within this Plan and Trust. The provisions of the group trust fund will govern any investment of Plan assets in that fund. To comply with Code §4975(d)(8) as to any group trust fund maintained by a disqualified person, including the Trustee, the following provisions apply: (A) a discretionary Trustee or a nondiscretionary Trustee may invest in any such fund at the direction of the Named Fiduciary who is independent of the Trustee and the Trustee's affiliates; (B) a discretionary Trustee or a nondiscretionary Trustee (the latter as directed)

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may invest in any such fund which the Employer specifies in Appendix C; and (C) notwithstanding (A) and (B) a discretionary Trustee may invest in its own funds as described in Section 8.02(A)(3).

8.10 COMBINING TRUSTS OF EMPLOYER'S PLANS. At the Employer's direction, the Trustee, for collective investment purposes, may combine into one trust fund the Trust created under this Plan with the trust created under any other qualified retirement plan the Employer maintains. However, the Trustee must maintain separate records of account for the assets of each Trust in order to reflect properly each Participant's Account Balance under the qualified plans in which he/she is a participant.

8.11 AMENDMENT/SUBSTITUTION OF TRUST.

(A) Amendment/Standardized Plan. The Employer in its Standardized Plan may not amend any provision of Article VIII (or any other provision of the Plan related to the Trust) except the Employer in Appendix C (or in its Adoption Agreement as applicable) may specify the Trust year, the names of the Plan, the Employer, the Trustee, the Custodian, the Plan Administrator, other fiduciaries or the name of any pooled trust in which the Trust will participate.

(B) Amendment/Nonstandardized or Volume Submitter Plan. The Employer in its Nonstandardized or Volume Submitter Plan, in Appendix C (or in its Adoption Agreement as applicable): (1) may amend the Plan or Trust as described in Section 8.11(A); or (2) may amend or override the administrative provisions of Article VIII (or any other provision of the Plan related to the Trust), including provisions relating to Trust investment and Trustee powers or duties.

(1) Limitation. Any Trust amendment under clause (2) of Section 8.11(B): (a) must not conflict with any other provisions of the Plan (except as expressly are intended to override an existing Trust provision); (b) must not cause the Plan to violate Code §401(a); and (c) must be made in accordance with Rev. Proc. 2005-16 or any successor thereto.

(C) Substitution of Approved Trust. The Employer subject to the conditions under Section 8.11(B)(1), may elect to substitute in place of Article VIII and the remaining trust provisions of the basic plan document, any other trust or custodial account agreement that the IRS has approved for use with this Plan. If the Employer elects to substitute an approved trust, the Trustee will not execute the Adoption Agreement but will instead execute the substituted trust. The Trustee of the substituted trust agrees to be bound by all remaining Plan terms, other than those terms which the substituted trust governs.

(D) Formalities. All Section 8.11 Trust amendments or substitutions are subject to Section 11.02 and require the written consent or signature of the Trustee.

**ARTICLE IX
PROVISIONS RELATING TO INSURANCE AND INSURANCE COMPANY**

9.01 INSURANCE BENEFIT.

(A) General. The Employer may elect to provide incidental life insurance benefits for Insurable Participants who consent to life insurance benefits by executing the appropriate insurance company application form. The Trustee will not purchase any incidental life insurance benefit for any Participant prior to a contribution allocation to the Participant's Account. At an insured Participant's written direction, the Trustee will use all or any portion of the Participant's Employee Contributions, if any, to pay insurance premiums covering the Participant's life.

(B) Insurance on Others. Unless the Plan is a Money Purchase Pension Plan, the Trustee may purchase life insurance for the benefit of the Participant on the life of a family member of the Participant.

(C) Amount and Type of Coverage. The Employer will direct the Trustee as to the insurance company and insurance agent through which the Trustee is to purchase the Contracts, the amount of the coverage and the applicable Dividend plan.

(D) Ownership. Each application for a Contract, and the Contracts themselves, must designate the Trustee as sole owner, with the right reserved to the Trustee to exercise any right or option contained in the Contracts, subject to the terms and provisions of this Plan. The Trustee must be the Contract named beneficiary for the Account of the insured Participant. The Trustee will hold all Contracts issued under the Plan as Trust assets.

(E) Distribution. Proceeds of Contracts paid to the Participant's Account under this Article IX are subject to the distribution requirements of Article VI. The Trustee will not retain any such proceeds for the benefit of the Trust.

(F) Premiums/Directed Investment. The Trustee will charge the premiums on any Contract covering the life of a Participant against the Account of that Participant and will treat the Contract as a directed investment of the Participant's Account, even if the Plan otherwise does not permit a Participant to direct the investment of his/her own Account.

(G) Uniformity. The Trustee must arrange, where possible, for all Contracts issued on the lives of Participants under the Plan to have the same premium due date and all ordinary life insurance Contracts to contain guaranteed cash values with as uniform basic options as are possible to obtain.

(H) Custodians. The provisions of this Article IX are not applicable, and the Plan may not invest in Contracts, if a Custodian signatory to the Adoption Agreement is a bank which does not have trust powers from its governing state banking authority.

9.02 LIMITATIONS ON COVERAGE.

(A) Incidental Insurance Benefits. The aggregate of life insurance premiums paid for the benefit of a Participant, at all times, may not exceed the following percentages of the aggregate of the Employer Contributions (including Elective Deferrals and forfeitures) allocated to any Participant's Account: (1) 49% in the case of the purchase of ordinary life insurance Contracts; or (2) 25% in the case of the purchase of term life insurance or universal life insurance Contracts. If the Trustee purchases a combination of ordinary life insurance Contract(s) and term life insurance or universal life insurance Contract(s), then the sum of one-half of the premiums paid for the ordinary life insurance Contract(s) and the premiums paid for the term life insurance or universal life insurance Contract(s) may not exceed 25% of the Employer Contributions allocated to any Participant's Account.

(B) Exception for Certain Profit Sharing Plans. If the Plan is a Profit Sharing Plan or a 401(k) Plan, the incidental insurance benefits requirement of Section 9.02(A) does not apply to the Plan if the Plan purchases life insurance benefits only from Employer Contributions accumulated in the Participant's Account for at least two years, measured from the allocation date.

(C) Exception for Other Amounts. The incidental insurance benefit requirement of Section 9.02(A) does not apply to Contracts purchased: (1) with Employee Contributions; (2) with Rollover Contributions; or (3) with Earnings on Employer Contributions.

9.03 DISPOSITION OF LIFE INSURANCE PROTECTION.

(A) Timing. The Trustee will not continue any life insurance protection beyond the later of the Participant's: (1) Annuity Starting Date under Section 6.01(A)(2)(h), or (2) Separation from Service. The Trustee, at the direction of the Plan Administrator, will make any transfer of Contract(s) as soon as administratively practicable after the date specified under this Section 9.03(A).

(B) Method. The Trustee may not transfer any Contract under this Section 9.03 which contains a method of payment not specifically authorized by Article VI or which fails to comply with the QJSA requirements, if applicable, of Section 6.04. In this regard, the Trustee either must convert such a Contract to cash and distribute the cash instead of the Contract, or before making the transfer, must require the Issuing Company to delete the unauthorized method of payment option from the Contract.

9.04 DIVIDENDS. Dividends are applied to the Participant's Account on whose life the Issuing Company has issued the Contract. Dividends are applied to premium reduction unless the Plan Administrator directs the Trustee to purchase insurance benefits or additional insurance benefits for the Participant.

9.05 LIMITATIONS ON INSURANCE COMPANY DUTIES.

(A) Not a Party to Plan. An insurance company, solely in its capacity as an Issuing Company: (1) is not a party to the Plan; and (2) is not responsible for the Plan's validity.

(B) No Responsibility for Others. Except as required by Applicable Law, an Issuing Company has no responsibility or obligation under the Plan to Participants or Beneficiaries for any act required of the Employer, the Plan Administrator, the Trustee, the Custodian or any other service provider to the Plan (unless the Issuing Company also serves in such capacities).

(C) Plan Terms. No insurance company, solely in its capacity as an Issuing Company, need examine the terms of this Plan.

(D) Reliance/Discharge. For the purpose of making application to an Issuing Company and in the exercise of any right or option contained in any Contract, the Issuing Company may rely upon the signature of the Trustee and is held harmless and completely discharged in acting at the direction and authorization of the Trustee. An Issuing Company is discharged from all liability for any amount paid to the Trustee or paid in accordance with the direction of the Trustee, and is not obliged to see to the distribution or further application of any amounts the Issuing Company so pays.

9.06 RECORDS/INFORMATION. An Issuing Company must keep such records and supply to the Plan Administrator or Trustee such information regarding its Contracts as may be reasonably necessary for the proper administration of the Plan.

9.07 CONFLICT WITH PLAN. In the event of any conflict between the provisions of this Plan and the terms of any Contract issued in accordance with this Article IX, the provisions of the Plan control.

9.08 APPENDIX B OVERRIDE. The Employer in Appendix B may amend the provisions of this Article IX in any manner except as would be inconsistent with any other Plan provision or with Applicable Law.

9.09 DEFINITIONS. For purposes of this Article IX:

(A) Contract(s). Contract or Contracts means an ordinary life, term life or universal life insurance contract issued by an Issuing Company on the life of a Participant or other person as authorized under this Article IX.

(B) Dividends. Dividends means Contract dividends, refunds of premiums and other credits.

(C) Insurable Participant. Insurable Participant means a Participant to whom an insurance company, upon an application being submitted in accordance with the Plan, will issue insurance coverage, either as a standard risk or as a risk in an extra mortality classification.

(D) Issuing Company. Issuing Company is any life insurance company which has issued a policy upon application by the Trustee under the terms of this Plan.

**ARTICLE X
TOP-HEAVY PROVISIONS**

10.01 DETERMINATION OF TOP-HEAVY STATUS.

- (A) Only Employer Plan.** If this Plan is the only qualified plan maintained by the Employer, the Plan is top-heavy for a Plan Year if the Top-Heavy Ratio as of the Determination Date exceeds 60%.
- (B) If Other Plans.** If the Employer maintains other qualified plans (including a simplified employee pension plan), or maintained another such plan now terminated, this Plan is top-heavy only if it is part of the Required Aggregation Group, and the Top-Heavy Ratio for the Required Aggregation Group and for the Permissive Aggregation Group, if any, each exceeds 60%.

(1) Count all aggregated plans. The Plan Administrator will calculate the Top-Heavy Ratio in the same manner as required by Section 10.06(K) taking into account all plans within the Aggregation Group. The Plan Administrator will calculate the Top-Heavy Ratio with reference to the Determination Dates that fall within the same calendar year. If an aggregated plan does not have a Valuation Date coinciding with the Determination Date, the Plan Administrator must value the Account Balance in the aggregated plan as of the most recent Valuation Date falling within the twelve-month period ending on the Determination Date, except as Code §416 and applicable Treasury regulations require for the first and for the second plan year of a Defined Benefit Plan.

(2) Terminated plans. To the extent the Plan Administrator must take into account distributions to a Participant, the Plan Administrator must include distributions from a terminated plan which would have been part of the Required Aggregation Group if it were in existence on the Determination Date.

(3) Defined Benefit Plans/SEPs. The Plan Administrator will calculate the present value of accrued benefits under Defined Benefit Plans or the account balances under simplified employee pension plans included within the Aggregation Group in accordance with the terms of those plans and Code §416 and the applicable Treasury regulations.

(C) Defined Benefit Plans.

(1) Use of uniform accrual. If a Participant in a Defined Benefit Plan is a Non-Key Employee, the Plan Administrator will determine his/her accrued benefit under the accrual method, if any, which is applicable uniformly to all Defined Benefit Plans maintained by the Employer or, if there is no uniform method, in accordance with the slowest accrual rate permitted under the fractional rule accrual method described in Code §411(b)(1)(C).

(2) Actuarial assumptions. If the Employer maintains a Defined Benefit Plan, the Plan Administrator will use the actuarial assumptions (interest and mortality

only) stated in that plan to calculate the present value of benefits from the Defined Benefit Plan.

(D) Application of Top-Heavy Rules. The top-heavy provisions of the Plan apply only for Plan Years in which Code §416 requires application of the top-heavy rules. If applicable, the provisions of this Article X supersede any conflicting Plan or Adoption Agreement provisions, except as the context may otherwise require.

10.02 TOP-HEAVY MINIMUM ALLOCATION. The Top-Heavy Minimum Allocation requirement applies to the Plan only in a Plan Year for which the Plan is top-heavy.

(A) Allocation to Non-Keys. If the Plan is top-heavy in any Plan Year each Non-Key Employee who is a Participant (as described in Section 10.06(H)) and employed by the Employer on the last day of the Plan Year will receive a Top-Heavy Minimum Allocation for that Plan Year.

(B) Additional Contribution/Allocation as Required. The Plan Administrator first will allocate the Employer Contributions (and Participant forfeitures, if any) for the Plan Year in accordance with the provisions of its Adoption Agreement. The Employer then will contribute an additional amount for the Account of any Participant entitled under Section 10.02(A) to a Top-Heavy Minimum Allocation and whose contribution rate for the Plan Year is less than the Top-Heavy Minimum Allocation. The additional amount is the amount necessary to increase the Participant's allocation rate to the Top-Heavy Minimum Allocation. The Plan Administrator will allocate the additional contribution to the Account of the Participant on whose behalf the Employer makes the contribution.

(C) No Plan Allocations. If, for a Plan Year, there are no allocations of Employer Contributions or of forfeitures for any Key Employee, the Plan does not require any Top-Heavy Minimum Allocation for the Plan Year, unless a Top-Heavy Minimum Allocation applies because of the maintenance by the Employer of more than one plan.

10.03 PLAN WHICH WILL SATISFY TOP-HEAVY. If the Plan is top-heavy, the Plan Administrator will determine if the Plan satisfies the Top-Heavy Minimum Allocation requirement under this Section 10.03.

(A) Aggregation of Plans to Satisfy. The Plan Administrator will aggregate all qualified plans the Employer maintains to determine if the Plan satisfies the Top-Heavy Minimum Allocation requirement.

(B) More Than One Defined Contribution Plan. If the Employer maintains more than one Defined Contribution Plan in which a Non-Key Employee participates and the Non-Key Employee receives less than the Top-Heavy Minimum Allocation for a Plan Year in which the Plan is top-heavy, the Plan Administrator operationally will determine to which plan the Employer will make the necessary additional contribution. If the Plan Administrator

elects for the Employer to make the additional contribution to this Plan, the Plan Administrator will allocate the contribution in accordance with Section 10.02(B). If the Plan Administrator elects for the Employer to make the additional contribution to another plan, the Plan Administrator must determine that the additional contribution is sufficient to satisfy the Top-Heavy Minimum Allocation.

(C) Defined Benefit Plan(s). If the Employer maintains one or more Defined Benefit Plans in addition to this Plan and a Non-Key Employee participates in both types of plans, the Plan Administrator operationally will determine if the Employer will make the necessary additional contribution to the Plan to satisfy the top-heavy Minimum Allocation Rate or if the Employer will provide a required top-heavy minimum benefit in the Defined Benefit Plan. If the Plan Administrator elects for the Employer to make the additional contribution to this Plan, the Top-Heavy Minimum Allocation is 5%, irrespective of the Highest Contribution Rate, and the Plan Administrator will allocate the contribution in accordance with Section 10.02(B). If the Plan Administrator elects for the Employer to satisfy the top-heavy minimum benefit in a Defined Benefit Plan, the Plan Administrator must determine that such top-heavy minimum benefit is sufficient to satisfy the top-heavy requirements in the Plan.

10.04 TOP-HEAVY VESTING. If the Employer in its Adoption Agreement does not elect immediate vesting, the Employer must elect a top-heavy (or modified top-heavy) vesting schedule. The specified top-heavy vesting schedule applies to all Accounts and Contribution Types not already subject to greater vesting and applies to the Plan's first top-heavy Plan Year and to all subsequent Plan Years, except as the Employer in its Adoption Agreement otherwise elects. If the Employer elects in its Adoption Agreement to apply the specified top-heavy vesting schedule only in Plan Years in which the Plan is top-heavy, any change in the Plan's vesting schedule resulting from this election is subject to Section 5.08, relating to vesting schedule amendments. As such, a Participant's vested percentage may not decrease as a result of a change in the Plan's top-heavy status in a subsequent Plan Year. When applicable, the relevant top-heavy vesting schedule applies to a Participant's entire Account Balance except as to those amounts which are already 100% Vested, and applies to such amounts accrued before the Plan became top-heavy.

10.05 SAFE HARBOR/SIMPLE PLAN EXEMPTION.

(A) Safe Harbor 401(k) Plan. If in any Plan Year: (1) the Plan Administrator allocates only Safe Harbor Contributions, Additional Matching Contributions and Elective Deferrals to the Plan; and (2) there are no forfeitures to allocate for the Plan Year or the Plan Administrator allocates forfeitures in the manner Section 3.07(A)(4) describes, the Plan will not be subject to the top-heavy requirements of this Article X for that Plan Year. In accordance with Section 3.07(A)(4), the Employer in its Adoption Agreement may elect to apply forfeitures in such a manner so as to preserve the top-heavy exemption under this Section 10.05(A). This Section 10.05(A) does not apply if the Employer in its Adoption Agreement elects

eligibility for Elective Deferrals which is earlier than the one Year of Service and age 21 eligibility requirements the Employer elects to apply for the Safe Harbor Contributions, using the OEE rule under Section 4.06(C).

(B) SIMPLE 401(k) Plan. A SIMPLE 401(k) Plan under Section 3.10 is not subject to the provisions of this Article X.

10.06 DEFINITIONS. For purposes of applying the top-heavy provisions of the Plan:

(A) Compensation. Compensation means Compensation as determined under Section 4.05(C) for Code §415 purposes and includes Compensation for the entire Plan Year.

(B) Determination Date. Determination Date means for any Plan Year, the Accounting Date of the preceding Plan Year or, in the case of the first Plan Year of the Plan, the Accounting Date of the first Plan Year.

(C) Determination (look-back) Period. Determination Period means the 1-year period ending on the Determination Date. In the case of distributions made for a reason other than Severance from Employment, death or Disability, the determination period means the 5-year period ending on the Determination Date.

(D) Employer. Employer means the Employer that adopts this Plan and any Related Employer.

(E) Highest Contribution Rate. Highest Contribution Rate means for any Key Employee, all Employer Contributions (including Elective Deferrals, but not including Employer contributions to Social Security and not including Catch-Up Deferrals) and forfeitures allocated to the Participant's Account for the Plan Year, divided by his/her Compensation for the entire Plan Year. To determine a Key Employee's contribution rate, the Plan Administrator must treat all qualified top-heavy Defined Contribution Plans maintained by the Employer (or by any Related Employer) as a single plan.

(F) Key Employee. Key Employee means, as of any Determination Date, any Employee or former Employee (including a deceased former Employee) who, at any time during the Determination Period: (i) has annual Compensation exceeding \$130,000 (as adjusted under Code §416(i)(1)(A)) and is an officer of the Employer; (ii) is a more than 5% owner of the Employer; or (iii) is a more than 1% owner of the Employer and has annual Compensation exceeding \$150,000.

(1) Attribution. The constructive ownership rules of Code §318 as modified by Code §416(i)(1)(B)(i) (or the principles of that Code section, in the case of an unincorporated Employer) will apply to determine ownership in the Employer.

(2) Maximum Officers. The number of officers taken into account under Section 10.06(F) clause (i) will not exceed the greater of 3 or 10% of the total number (after application of the Code §414(q) exclusions) of Employees, and in no event will exceed 50 officers.

(3) Applicable Law. The Plan Administrator will make the determination of who is a Key Employee in accordance with Code §416(i)(1), the applicable Treasury regulations and other Applicable Law.

(G) Non-Key Employee. Non-Key Employee means an Employee who is not a Key Employee.

(H) Participant. Participant means any Employee otherwise eligible to participate in the Plan, even if the Participant would not be entitled to other Plan allocations or would receive a lesser allocation under the Plan terms.

(I) Permissive Aggregation Group. Permissive Aggregation Group means the Required Aggregation Group plus any other qualified plans maintained by the Employer, but only if such group would satisfy in the aggregate the nondiscrimination requirements of Code §401(a)(4) and the coverage requirements of Code §410. The Plan Administrator will determine the Permissive Aggregation Group.

(J) Required Aggregation Group. Required

Aggregation Group means: (1) each qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the Determination Period (including terminated plans); and (2) any other qualified plan of the Employer which enables a plan described in clause (1) to meet the requirements of Code §401(a)(4) or of Code §410.

(K) Top-Heavy Ratio. Top-Heavy Ratio means a fraction, the numerator of which is the sum of the Account Balances of all Key Employees as of the Determination Date and the denominator of which is the sum of the Account Balances for all Employees as of the Determination Date. The Plan Administrator will include Catch-Up Deferrals and will disregard DECs in determining the Top-Heavy Ratio.

(1) Amounts included. The Plan Administrator must include in the Top-Heavy Ratio, as part of the Account Balances, any contribution not made as of the Determination Date but includible under Code §416 and the applicable Treasury regulations, and distributions made within the Determination Period.

(2) Former Key Employees. The Plan Administrator must calculate the Top-Heavy Ratio by disregarding the Account Balance (and distributions, if any, of the Account Balance) of any Non-Key Employee who was formerly a Key Employee.

(3) No Service during 1-year look-back. The Plan Administrator must calculate the Top-Heavy Ratio by disregarding the Account Balance (including distributions, if any, of the Account Balance) of an individual who has not received credit for at least one Hour of Service with the Employer during the Determination Period, which for purposes of this Section 10.06(K)(3), means the 1-year period described in Section 10.06(C).

(4) Distributions, Rollover Contributions and Transfers. The Plan Administrator must calculate the Top-Heavy Ratio, including the extent to which it must

take into account distributions, Rollover Contributions and Transfers, in accordance with Code §416 and the applicable Treasury regulations.

(L) Top-Heavy Minimum Allocation. Top-Heavy Minimum Allocation means an allocation equal to the lesser of 3% of the Non-Key Employee's Compensation for the Plan Year or the highest contribution rate for the Plan Year made on behalf of any Key Employee multiplied by the Non-Key Employee's Plan Year Compensation. For purposes of satisfying the Employer's Top-Heavy Minimum Allocation requirement, the Plan Administrator disregards the Elective Deferrals allocated to a Non-Key Employee's Account in determining the Non-Key Employee's allocation rate. To determine a Non-Key Employee's allocation rate, the Plan Administrator must treat all qualified top-heavy Defined Contribution Plans maintained by the Employer (or by any Related Employer) as a single plan. If a Defined Benefit Plan maintained by the Employer which benefits a Key Employee depends on this Plan to satisfy the nondiscrimination rules of Code §401(a)(4) or the coverage rules of Code §410 (or another plan benefiting the Key Employee so depends on such Defined Benefit Plan), the top-heavy minimum allocation is 3% of the Non-Key Employee's Compensation regardless of the contribution rate for the Key Employees.

**ARTICLE XI
EXCLUSIVE BENEFIT, AMENDMENT, AND TERMINATION**

11.01 EXCLUSIVE BENEFIT.

(A) No Reversion/Diversion. Except as provided under Section 3.01(H), the Employer does not have any beneficial interest in any asset of the Trust Fund and no part of any asset in the Trust Fund may ever revert to or be repaid to the Employer, either directly or indirectly; nor, prior to the satisfaction of all liabilities with respect to the Participants and their Beneficiaries under the Plan, may any part of the corpus or income of the Trust Fund, or any asset of the Trust Fund, be (at any time) used for, or diverted to, purposes other than the exclusive benefit of the Participants or their Beneficiaries and for defraying reasonable expenses of administering the Plan.

(B) Initial Qualification. If the IRS, upon the Employer's application for initial approval of this Plan, determines the Trust created under the Plan is not a qualified trust exempt from Federal income tax, the Trustee, upon written notice from the Employer, will return the Employer Contributions and the Earnings thereon to the Employer. This Section 11.01(B) applies only if the Employer makes the application for the determination by the time prescribed by law for filing the Employer's tax return for the Taxable Year in which the Employer adopted the Plan, or by such later date as the Secretary of the Treasury may prescribe. The Trustee must make the return of the Employer contribution under this Section 11.01(B) within one year of a final disposition of the Employer's request for initial approval of the Plan. The Employer's Plan and Trust will terminate upon the Trustee's return of the Employer Contributions.

11.02 AMENDMENT BY EMPLOYER.

(A) Permitted Amendments. The Employer, consistent with this Section 11.02 and other applicable Plan provisions, has the right, at any time to amend or to restate the Plan including the Trust.

(1) Adoption Agreement/Appendix B overrides. The Employer may: (a) restate its Adoption Agreement (including converting the Plan to another type of plan using a different Adoption Agreement approved for use with the Prototype or Volume Submitter Plan and as not inconsistent with Applicable Law); (b) amend the elective provisions of the Adoption Agreement (changing an existing election or making a new election) in any manner the Employer deems necessary or advisable and as not inconsistent with Applicable Law; and (c) elect in Appendix B any or all of the basic plan overrides specified therein, including adding language to satisfy Code §§415 or 416 because of the required aggregation of multiple plans.

(2) Model amendments. The Employer may adopt model amendments published by the IRS (the adoption of which the IRS provides will not cause the Plan to be individually designed).

(3) Interim amendments. The Employer may make such good faith amendments as the Employer considers necessary to maintain the Plan's tax-qualified status or to otherwise keep the Plan in compliance with Applicable Law.

(4) Corrections. The Employer may amend the Plan to correct typographical errors and cross-references, provided that these corrections do not change the original intended meaning or impact any qualification requirements.

(B) Amendment Formalities.

(1) Writing. The Employer must make all Plan amendments in writing. Each amendment must specify the amendment execution date and, if different from its execution date, must specify the amendment's retroactive, current or prospective Effective Date.

(2) Restatement. An Employer may amend its Plan by means of a complete restatement of its Adoption Agreement. To restate its Plan, the Employer must complete, and the Employer and Trustee or Custodian must execute, a new Adoption Agreement. See Section 8.11(C) if the Employer elects in its Adoption Agreement to adopt a separate approved trust agreement.

(3) Amendment (without restatement). An Employer may amend its Plan without completion of a new Adoption Agreement by either: (a) completion and substitution of one or more Adoption Agreement pages including a new Adoption Agreement Execution Page executed by the Employer and if applicable, executed by the Trustee or Custodian; or (b) other written instrument amending the Adoption Agreement executed by the Employer and if applicable, executed by the Trustee or Custodian. Except under Sections 4.08 or 8.11, to preserve the Plan's pre-approved status under Section 7.09, the substantive language of any amendment under Section 11.02(B)(3), clause (b) (amendment other than by substituted Adoption Agreement page) must reproduce without alteration, the relevant portion(s) of the Adoption Agreement text and elections which the Employer is amending or must have the substantive effect of doing so such as incorporating by reference the Adoption Agreement text into the amendment.

(4) Effect of certain alterations. Any restatement or amendment which is not permitted under this Section 11.02 or elsewhere in the Plan may result in the IRS treating the Plan as an individually designed plan. See Section 7.09 for the effect of certain amendments adopted by the Employer which will result in the Employer's Plan losing Prototype Plan or Volume Submitter Plan status.

(5) Operational discretion and policy not an amendment. A Plan amendment does not include the Plan Administrator's exercise of any operational discretion the Plan accords to the Administrator, including but not limited to, the Plan Administrator's adoption, modification or termination of any policy, rule or regulation in accordance with the Plan or any change to any Adoption Agreement checklist.

(6) Trustee/Custodian signature to amendment. The Trustee or Custodian must execute any Adoption Agreement for a Restated Plan and also must execute any Plan amendment which alters the Trust provisions of Article VIII or which otherwise affects the Trustee's or Custodian's duties under the Plan.

(7) Signatory Employer authority. If the Plan has Participating Employers, only the Signatory Employer need execute any Plan amendment under this Section 11.02. See Section 1.23(A).

(C) Impermissible Amendment/Protected Benefits.

(1) Exclusive benefit/no reversion. The Employer may not amend the Plan to permit any of the Trust Fund (other than as required to pay any Trust taxes and reasonable Plan administrative expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Participants and Beneficiaries. An amendment may not cause any portion of the Trust Fund to revert to the Employer or to become the Employer's property.

(2) Alteration of Plan Administrator or Trustee/Custodian duties. The Employer may not amend the Plan in any manner which affects the powers, duties or responsibilities of the Plan Administrator, the Trustee or the Custodian without the written consent of the affected party. See Section 11.02(B)(6).

(3) No cut-backs. An amendment (including the adoption of this Plan as a restatement of an existing plan) may not decrease a Participant's Account Balance, except to the extent permitted under Code §412(c)(8), and except as provided under Applicable Law, may not reduce or eliminate Protected Benefits determined immediately prior to the adoption date (or, if later, the Effective Date) of the amendment. An amendment reduces or eliminates Protected Benefits if the amendment has the effect of either: (a) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in Treasury regulations); or (b) except as provided under Applicable Law, eliminating an optional form of benefit. An amendment does not impermissibly eliminate a Protected Benefit relating to the method of distribution if after the amendment a Participant may receive a single sum payment at the same time or times as the method of distribution eliminated by the amendment and such payment is based on the same or a greater portion of the Participant's Account as the eliminated method of distribution. This Section 11.02(C)(3) applies to Transfers under 11.06 except as to certain Elective Transfers under 11.06(E).

(4) Disregard of amendment/Tracking Protected Benefits. The Plan Administrator must disregard an amendment to the extent application of the amendment would fail to satisfy this Section 11.02(C). The Plan Administrator, in an Adoption Agreement checklist, may maintain a list of Protected Benefits it must retain.

11.03 AMENDMENT BY PROTOTYPE SPONSOR/VOLUME SUBMITTER PRACTITIONER.

(A) General. The Sponsor (or the M&P Mass Submitter under Section 4.08 of Rev. Proc. 2005-16) or the Practitioner, without the Employer's consent, may amend the Plan and Trust, from time to time: (1) to conform the Plan and Trust to any changes to the Code, regulations, revenue rulings, other statements published by the IRS (including adoption of model, sample or other required good faith amendments that specifically provide that their adoption will not cause such plan to be individually designed); or (2) to make corrections to the approved Plan.

(B) Notice to Employers. The Sponsor or Practitioner must make reasonable and diligent efforts to ensure adopting Employers have actually received and are aware of all Sponsor or Practitioner generated Plan amendments and that such Employers complete and sign new Adoption Agreements when necessary.

(C) Prohibited Amendments. Except under Section 11.03(A), the Sponsor or Practitioner may not amend the Plan in any manner which would modify any adopting Employer's Plan existing Adoption Agreement election without the Employer's written consent. In addition, the Sponsor or Practitioner may not amend the Plan in any manner which would violate Section 11.02(C).

(D) Volume Submitter Practitioner limitations. A Practitioner may no longer amend the Plan as to any adopting Employer which has amended its Plan in a manner as would result in the type of plan not permitted under the Volume Submitter program or which would render the Plan an individually designed plan not entitled to the Volume Submitter remedial amendment period cycle. If an Employer, because of a modification to the Plan is required to obtain a favorable determination letter to have reliance, the Practitioner may not amend the Plan on behalf of the adopting Employer unless the Employer obtains such a letter. If the Employer adopts this Plan as a restated Plan, the provisions of this Section 11.03 permitting a Practitioner to amend the Plan apply on and after the date the Employer executes the restated Plan; provided that such provisions may have applied on an earlier date (but not before February 17, 2005) if the prior Plan document provided for such Practitioner amendments.

(E) Mass Submitter Amendment. If the Sponsor does not adopt the amendments made by the Mass Submitter, the Sponsor will no longer be the sponsor of an identical or minor modifier Prototype Plan of the Mass Submitter.

11.04 FROZEN PLAN.

(A) Employer Action to Freeze. The Employer subject to Section 11.02(C) and by proper Employer action has the right, at any time, to suspend or discontinue all contributions under the Plan and thereafter to continue to maintain the Plan as a Frozen Plan (subject to such suspension or discontinuance) until the Employer terminates the Plan. During any period while the Plan is frozen, the Plan Administrator will continue to: (1) allocate forfeitures, if any, in accordance with Section 3.07, irrespective of when the forfeitures occur; and (2) operate

the Plan in accordance with its terms other than those related to the making and allocation of additional (new) contributions. If the Employer under a Profit Sharing Plan or a 401(k) Plan completely discontinues contributions (including Elective Deferrals), the Plan Administrator will treat the Plan as a Frozen Plan.

(B) Vesting. Upon the Employer's freezing under Section 11.04(A) of the Plan which is a Profit Sharing Plan or 401(k) Plan, an affected Participant's right to his/her Account Balance is 100% Vested, irrespective of the Vested percentage which otherwise would apply under Article V.

(C) Not a Termination. A resolution or an amendment to discontinue all future contributions, but otherwise to continue maintenance of this Plan, is not a Plan termination for purposes of Section 11.05.

11.05 PLAN TERMINATION.

(A) Employer Action to Terminate. The Employer subject to Section 11.02(C) and by proper Employer action has the right, at any time, to terminate this Plan and the Trust created and maintained under the Plan. Any termination of the Plan under this Section 11.05(A) is not effective until compliance with applicable notice requirements under ERISA, if any. The Plan will terminate upon the first to occur of the following:

(1) Specified date. The Effective Date of termination specified by proper Employer action; or

(2) Employer no longer exists. The Effective Date of dissolution or merger of the Employer, unless a successor makes provision to continue the Plan, in which event the successor must substitute itself as the Employer under this Plan.

(B) QTA Action to Terminate Abandoned Plan.

(1) Definition of Qualified Termination Administrator (QTA). A QTA is an entity which: (a) is eligible to serve as trustee or issuer of an individual retirement account or of an individual retirement annuity; and (b) holds the assets of the abandoned Plan.

(2) QTA procedure. A QTA, after making reasonable efforts to contact the Employer, may make a determination that the Employer has abandoned the Plan and give notice thereof to the DOL. The QTA then may: (i) update Plan records; (ii) calculate benefits; (iii) allocate assets and expenses; (iv) report to DOL any delinquent contributions; (v) engage service providers and pay reasonable Plan expenses; (vi) provide required notice to Participants and Beneficiaries regarding the Plan termination; (vii) distribute Plan benefits; (viii) file the Form 5500 terminal report and give notice to DOL of completion of the termination; and (ix) take all other reasonable and necessary actions to wind-up and terminate the Plan. A QTA will undertake all actions under this Section 11.05(B) in accordance with Applicable Law, including Prohibited Transaction Class Exemption 2006-06, relating to the QTA's services and compensation for services.

(C) Vesting. Upon either full or partial termination of the Plan, an affected Participant's right to his/her Account Balance is 100% Vested, irrespective of the Vested percentage which otherwise would apply under Article V.

(D) General Procedure upon Termination. Upon termination of the Plan, the distribution provisions of Article VI remain operative, with the following exceptions:

(1) If no consent required. If the Participant's Vested Account Balance does not exceed \$5,000 (or exceeds \$5,000 but the Participant has attained the later of age 62 or Normal Retirement Age), the Plan Administrator will direct the Trustee to distribute in cash (subject to Section 8.04) the Participant's Vested Account Balance to him/her in a Lump-Sum as soon as administratively practicable after the Plan terminates.

(2) If consent required. If the Participant's Vested Account Balance exceeds \$5,000 and the Participant has not attained the later of age 62 or Normal Retirement Age, the Participant or the Beneficiary may elect to have the Trustee commence distribution in cash (subject to Section 8.04) of his/her Vested Account Balance in a Lump-Sum as soon as administratively practicable after the Plan terminates. If a Participant with consent rights under this Section 11.05(D)(2) does not elect an immediate Lump-Sum distribution with spousal consent if required, to liquidate the Trust, the Plan Administrator will instruct the Trustee or Custodian to purchase a deferred Annuity Contract for the Participant which protects the Participant's distribution rights under the Plan.

(3) Lower dollar amount. As provided in Section 6.09, the Employer in Appendix B may provide for a lower dollar threshold than \$5,000 under this Section 11.05(D).

(E) Profit Sharing Plan. If the Plan is a Profit Sharing Plan, in lieu of applying Section 11.05(D) and the distribution provisions of Article VI, the Plan Administrator will direct the Trustee to distribute in cash (subject to Section 8.04) each Participant's Vested Account Balance, in a Lump-Sum, as soon as administratively practicable after the termination of the Plan, irrespective of the amount of the Participant's Vested Account Balance, the Participant's age and whether the Participant consents to the distribution.

(1) Limitations. This Section 11.05(E) does not apply if: (a) the Plan at termination provides for distribution of an Annuity Contract which is a Protected Benefit and which the Employer may not (or does not) eliminate by Plan amendment; or (b) as of the period between the Plan termination date and the final distribution of assets, the Employer maintains any other Defined Contribution Plan (other than an ESOP). If clause (b) applies, the Plan Administrator to facilitate Plan termination may direct the Trustee to transfer the Account of any non-consenting Participant to the other Defined Contribution Plan.

(F) 401(k) Plan Distribution Restrictions. If the Plan is a 401(k) Plan or if the Plan as the result of a Transfer holds Restricted 401(k) Accounts under Section 6.01(C)(4)(b), a

Participant's Restricted 401(k) Accounts are distributable on account of Plan termination, as described in this Section 11.05, only if: (i) the Employer (including any Related Employer, determined as of the Effective Date of Plan termination) does not maintain an Alternative Defined Contribution Plan and the Plan Administrator distributes the Participant's entire Vested Account Balance in a Lump-Sum; or (ii) the Participant otherwise is entitled under the Plan to a distribution of his/her Vested Account Balance.

(I) Definition of Alternative Defined Contribution Plan. An Alternative Defined Contribution Plan is a Defined Contribution Plan (other than an ESOP, simplified employee pension plan, 403(b) plan, SIMPLE IRA or 457 plan) the Employer (or a Related Employer) maintains beginning at the Plan termination Effective Date of the Plan and ending twelve months after the final distribution of assets. However, a plan is not an Alternative Defined Contribution Plan if less than 2% of the Employees eligible to participate in the terminating Plan are eligible to participate (beginning 12 months prior to and ending 12 months after the Plan's termination Effective Date) in the potential Alternative Defined Contribution Plan.

(G) Continuing Trust Provisions. The Trust will continue until the Trustee in accordance with the direction of the Plan Administrator has distributed all of the benefits under the Plan. On each Valuation Date, the Plan Administrator will credit any part of a Participant's Account Balance retained in the Trust with its share of Earnings. Upon termination of the Plan, any suspense account under Section 4.01 will revert to the Employer, subject to the conditions of the Treasury regulations permitting such a reversion.

(H) Lost Participants. The Trustee will distribute the Accounts of lost Participants in a terminating Plan in accordance with the Plan Administrator's direction under Section 7.07(B).

11.06 MERGER/DIRECT TRANSFER.

(A) Authority. The Trustee, at the direction of the Plan Administrator, possesses the specific authority to enter into merger agreements or direct transfer of assets agreements with the trustees of other retirement plans described in Code §401(a), and to accept the direct transfer of plan assets to the Trust, or to transfer Plan assets, as a party to any such agreement. This authority includes Nonelective Transfers described in Section 11.06(D) and Elective Transfers described in Section 11.06(E).

(B) Code §414(I) Requirements. The Trustee may not consent to, or be a party to, any merger or consolidation with another plan, or to a transfer of assets or liabilities to another plan (or from the other plan to this Plan), unless immediately after the merger, consolidation or transfer, the surviving plan provides each Participant a benefit equal to or greater in amount than the benefit each Participant would have received had the transferring plan terminated immediately before the merger or the consolidation or the transfer; provided that 100% immediate vesting is not required upon merger, consolidation or transfer, except if an Elective Transfer is made under Section 11.06(E)(3).

(C) Administration of Transferred Amount. The Trustee will hold, administer and distribute the transferred assets as a part of the Trust Fund and the Trustee must maintain a separate Employer Contribution Account for the benefit of the Employee on whose behalf the Trustee accepted the Transfer in order to reflect the value of the transferred assets and as necessary to preserve Protected Benefits.

(D) Nonelective Transfers. The Trustee may enter into an agreement with the trustee of any other plan described in Section 11.06(A) to transfer as a Nonelective Transfer all or a portion of the Account(s) of one or more Participants to the other plan, or to receive Nonelective Transfers into the Plan. A Nonelective Transfer is a Transfer without the consent or election of the affected Participant(s). In the event of a Nonelective Transfer, the trustee of the transferee plan must preserve all Protected Benefits under the transferor plan, unless the trustee or other appropriate party takes proper action to eliminate any of such Protected Benefits as Applicable Law may permit.

(E) Elective Transfers. The Trustee may enter into an agreement with the trustee of any other plan described in Section 11.06(A) to transfer as an Elective Transfer all or a portion of the Account of a Participant or if applicable a Beneficiary who elects to transfer his/her Account or a portion thereof to the other plan or to receive Elective Transfers into the Plan. The specific requirements for an Elective Transfer depend upon the type of Elective Transfer that the Trustee will utilize to effect the Transfer, as described herein.

(1) Code §411(d)(6)(D) Transfer. A Code §411(d)(6)(D) Transfer means a Transfer under Code §411(d)(6)(D) between Defined Contribution Plans, and which a Participant or Beneficiary elects following required statutory notice. Under this Section 11.06(E)(1), the Account need not be distributable at the time of Transfer and Protected Benefits specifically relating to distribution methods do not carry over to the transferee plan, except under Section 6.04 if applicable.

(2) Acquisition or employment change Transfer. An acquisition or employment change Transfer means a Transfer under Treas. Reg. §1.411(d)-4 Q/A-3(b), between such Defined Contribution Plans as described therein, and which a Participant elects. Under this Section 11.06(E)(2), the Account need not be distributable at the time of Transfer and Protected Benefits do not carry over to the transferee plan, except under Section 6.04 if applicable.

(3) Distributable event Transfer. A distributable event Transfer means a Transfer under Treas. Reg. §1.411(d)-4 Q/A-3(c), between Code §401(a) plans, and which a Participant elects. Under this Section 11.06(E)(3), the Account must be distributable at the time of Transfer, but not entirely as a Lump-Sum which is an Eligible Rollover Distribution. Protected Benefits do not carry over to the transferee plan.

(F) Pre-Participation Transfers. The Trustee under this Section 11.06 may accept a Transfer of plan assets on behalf of an Employee prior to the date the Employee satisfies the Plan's eligibility conditions or prior to reaching the

Entry Date. If the Trustee accepts such a direct Transfer of plan assets, the Plan Administrator and the Trustee must treat the Employee as a limited Participant as described in Section 3.08(C).

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**ARTICLE XII
MULTIPLE EMPLOYER PLAN
[VOLUME SUBMITTER ONLY]**

12.01 **ELECTION/OVERRIDING EFFECT.** This Article XII does not apply unless the Employer establishes the Plan as a Multiple Employer Plan described in Code §413(c) under a Volume Submitter Adoption Agreement. Article XII does not apply if the Plan is a Prototype Plan. If the Employer elects in its Adoption Agreement that the Plan is a Multiple Employer Plan, then the provisions of this Article XII will apply as of the Effective Date the Employer elects in its Adoption Agreement to apply this Article XII. The provisions of Article XII, if in effect, supersede any contrary provisions in the Plan or the Employer's Adoption Agreement.

12.02 **DEFINITIONS.** The following definitions apply to this Article XII and supersede any conflicting definition in the Plan.

(A) Employee. Employee means any common law employee, Self-Employed Individual, Leased Employee or other person the Code treats as an employee of a Participating Employer for purposes of the Participating Employer's qualified plan. The Employer in its Adoption Agreement or in a Participation Agreement may designate any Employee, or class or group of Employees, as an Excluded Employee under Section 1.21(D).

(B) Lead Employer. The Lead Employer means the Signatory Employer to the Adoption Agreement Execution Page, and does not include any Related Employer or Participating Employer except as described in the next sentence. The Lead Employer will be a Participating Employer only if the Lead Employer executes a Participation Agreement to the Adoption Agreement. The Lead Employer has the same meaning as the Signatory Employer for purposes of making Plan amendments and other purposes as described in Section 1.23(A) regardless of whether the Lead Employer is also a Participating Employer under this Article XII. As to the right of a Lead Employer to terminate the participation of a Participating Employer, see Section 12.12.

(C) Participating Employer. A "Participating Employer" is a trade or business which, with the consent of the Lead Employer, executes a Participation Agreement to the Adoption Agreement. A Participating Employer is an Employer for all purposes of the Plan except as provided in Section 1.23. A Participating Employer may, but need not be a Related Employer.

(D) Professional Employer Organization (PEO). A Professional Employer Organization (PEO) means an organization described in Rev. Proc. 2002-21. Plan references to Rev. Proc. 2002-21 also include any successor thereto. The Employer in its Adoption Agreement will specify whether the Lead Employer is a PEO, and in such event, the term PEO is synonymous with the Lead Employer. If the Lead Employer is a PEO, then:

(1) Client Organization ("CO"). Each Participating Employer (other than the PEO) is a Client Organization as that term is used in Rev. Proc. 2002-21.

(2) Worksite Employee. A Worksite Employee means a person on the PEO's payroll who receives amounts from the PEO for providing services to a CO pursuant to a service agreement between the PEO and the CO. For all purposes of this Plan, a Worksite Employee will be deemed to be the Employee of the CO for whom the Worksite Employee performs services, and not an Employee of the PEO.

12.03 **PARTICIPATING EMPLOYER ELECTIONS.** In its Adoption Agreement, the Lead Employer will specify: (A) whether a Participating Employer may modify any of the Adoption Agreement elections; (B) which elections the Participating Employer may modify; and (C) any restrictions on the modifications. Any such modification will apply only to the Employees of that Participating Employer. The Participating Employer will make any such modification by election on its Participation Agreement to the Lead Employer's Adoption Agreement. To the extent that the Adoption Agreement does not permit modification of an election, any attempt by a Participating Employer to modify the election has no effect on the Plan and the Participating Employer is bound by the Adoption Agreement terms as completed by the Lead Employer.

12.04 **HCE STATUS.** The Plan Administrator will determine HCE status under Section 1.21(E) separately with respect to each Participating Employer.

12.05 **TESTING.**

(A) Separate Status. The Plan Administrator will perform the tests listed in this Section 12.05(A) separately for each Participating Employer, with respect to the Employees of that Participating Employer. For this purpose, the Employees of a Participating Employer, and their allocations and Accounts, will be treated as though they were in separate plan. Any Plan correction under Section 7.08 will only affect the Employees of the Participating Employer. The tests subject to this separate treatment are:

(1) ADP. The ADP test in Section 4.10(B).

(2) ACP. The ACP test in Section 4.10(C).

(3) Nondiscrimination. Nondiscrimination testing as described in Code §401(a)(4), the applicable Treasury regulations, and Sections 4.06 and 4.07.

(4) Coverage. Coverage testing as described in Code §410(b), the applicable Treasury regulations, and Sections 3.06(F) and 4.06.

(B) Joint Status. The Plan Administrator will perform the following tests for the Plan as whole, without regard to an Employee's employment by a particular Participating Employer:

(1) Annual Additions Limit. Applying the Annual Additions Limit in Section 4.05(B).

(2) **Elective Deferral Limit.** Applying the Elective Deferral Limit in Section 4.10(A).

(3) **Catch-Up Limit.** Applying the limit on Catch-Up Deferrals in Section 3.02(D).

12.06 **TOP-HEAVY.** The Plan will apply the provisions of Article X separately to each Participating Employer. The Plan will be considered separate plans for each Participating Employer and its Employees for purposes of determining whether such a separate plan is top-heavy or is entitled to the exemption described in Section 10.05. For purposes of applying Article X to a Participating Employer, the Participating Employer and any business which is a Related Employer to that Participating Employer are the "Employer." For purposes of Article X, the terms "Key Employee" and "Non-Key Employee" will refer only to the Employees of that Participating Employer and/or its Related Employers. If such a Participating Employer's separate Plan is top-heavy, then:

(A) **Highest Contribution Rate.** The Plan Administrator will determine the Highest Contribution Rate under Section 10.06(E) by reference to the Key Employees and their allocations in the separate plan of that Participating Employer;

(B) **Top-Heavy Minimum Allocation.** The Plan Administrator will determine the amount of any required Top-Heavy Minimum Allocation under Section 10.06(L) separately for that separate plan; and

(C) **Plan Which Will Satisfy.** The Participating Employer will make any additional contributions Section 10.03 requires.

12.07 **COMPENSATION.**

(A) **Separate Determination.** For the following purposes, described in this Section 12.07(A), the Plan Administrator will determine separately a Participant's Compensation for each Participating Employer. Under this determination, except as provided below, Compensation from a Participating Employer includes Compensation paid by a Related Employer of that Participating Employer.

(1) **Nondiscrimination and coverage.** All of the separate tests listed in Section 12.05(A).

(2) **Top-Heavy.** Application of the top-heavy rules in Article X.

(3) **Allocations.** Application of allocations under Article III. However, the Employer's Adoption Agreement elections control the extent to which Compensation for this purpose includes Compensation of Related Employers.

(4) **HCE determination.** The determination of an Employee's status as an HCE.

(B) **Joint Status.** For all Plan purposes other than those described in Section 12.07(A), including but not limited to determining the Annual Additions Limit in Section 4.05(B), Compensation includes all Compensation paid by or for any Participating Employer or Related Employer.

12.08 **SERVICE.** An Employee's Service includes all Hours of Service and Years of Service with any and all Participating Employers and their Related Employers. An Employee who terminates employment with one Participating Employer and immediately commences employment with another Participating Employer has not incurred a Separation from Service or a Severance from Employment.

12.09 **REQUIRED MINIMUM DISTRIBUTIONS.** If a Participant is a more than 5% Owner (under Code §416(i) and Section 6.02(E)(7)(a)) of any Participating Employer for which the Participant is an Employee in the Plan Year the Participant attains age 70 1/2, then the Participant's RBD under Section 6.02(E)(7) will be the April 1 following the close of the calendar year in which the Participant attains age 70 1/2.

12.10 **COOPERATION AND INDEMNIFICATION.**

(A) **Cooperation.** Each Participating Employer agrees to timely provide to the Plan Administrator upon request all information the Plan Administrator deems necessary to ensure the Plan is operated in accordance with Applicable Law. Each Participating Employer will cooperate fully with the Plan Administrator, the Lead Employer, and with Plan fiduciaries and other proper Plan representatives in maintaining the qualified status of the Plan. Such cooperation will include payment of such amounts into the Plan, to be allocated to Employees of the Participating Employer, which are reasonably required to maintain the tax-qualified status of the Plan.

(B) **Indemnity.** Each Participating Employer will indemnify and hold harmless the Plan Administrator, the Lead Employer, the Plan, the Trustee, other Plan fiduciaries, other Participating Employers, Participants and Beneficiaries, and as applicable, their subsidiaries, officers, directors, shareholders, employees, and agents, and their respective successors and assigns, against any cause of action, loss, liability, damage, cost, or expense of any nature whatsoever (including, but not limited to, attorney's fees and costs, whether or not suit is brought, as well as all IRS or DOL Plan disqualification, fiduciary breach or other sanctions, compliance fees or penalties) arising out of or relating to: (1) the Participating Employer's noncompliance with any of the Plan's terms or requirements; or (2) the Participating Employer's intentional or negligent act or omission with regard to the Plan.

12.11 **PEO TRANSITION RULES.** If the Lead Employer is a PEO, and the Article XII Effective Date is after the later of the Plan's Effective Date or Restated Effective Date, then the following transition rules will apply to the Transition Year:

(A) **Definition of Transition Year.** The Transition Year is the Plan Year which includes the Article XII Effective Date.

(B) **Definition of Look-Back Year.** The Look-Back Year is the Plan Year immediately prior to the Transition Year.

(C) **Employee Status.** Unless the PEO designates otherwise in Appendix B, for Plan Years ending prior to the Transition Year the Worksite Employees will be deemed to be Employees of the PEO, except as otherwise specified in this Article XII.

(D) Distribution. The limitations of Section 6.01(C)(4) will not prohibit making any distribution required by Rev. Proc. 2002-21.

(E) Top-heavy. The Determination Date under Section 10.06(B) for the Transition Year is the last day of the Transition Year. In its Adoption Agreement, the PEO will specify whether Employer Contributions for Worksite Employees for Plan Years prior to the Transition Year will be treated as contributions by the PEO, or as contributions by the CO. If the contributions are treated as PEO contributions, then the Plan Administrator will disregard Account Balances relating to those contributions (i.e., Employer Contribution Account Balances prior to the Transition Year and Earnings thereon) in determining whether the separate plan of a Participating Employer is top-heavy for the Transition Year and later Plan Years under Section 12.06.

(F) ADP/ACP Testing. The Plan Administrator will treat the Transition Year as the first Plan Year of the Plan for purposes of ADP and ACP testing of a CO's separate plan under Section 12.05.

(G) HCE Determination. If the Worksite Employee performed services for the CO during the Look-Back Year, then only for purposes of determining HCE status, the Worksite Employee will be deemed to be an Employee of the CO for the Transition Year and the CO will be deemed to have paid to the Worksite Employee any Compensation the PEO paid to the Worksite Employee during the Transition Year.

(H) Required Minimum Distributions. The following rules apply with regard to each Worksite Employee who, prior to January 1, 2004: (i) attained age 70 1/2 (ii) was still on the payroll of the PEO, and (iii) had not commenced receiving RMDs under Section 6.02.

(1) Determination of 5% owner status. The Plan Administrator will determine whether such a Worksite Employee is a more than 5% owner under Section 6.02(E)(7)(a) based on whether the Worksite Employee is a more than 5% owner on the first day of the Transition Year. Alternatively, in Appendix B, the PEO may specify that the determination is made with reference to the Plan Year ending in the calendar year the Worksite Employee attained age 70 1/2.

(2) Required Beginning Date. The Required Beginning Date under Section 6.02(E)(7) of a more than 5% owner under Section 12.11(H)(1) will be April 1, 2005.

12.12 INVOLUNTARY TERMINATION. Unless the Lead Employer provides otherwise in Appendix B, the Lead Employer may terminate the participation of any Participating Employer (hereafter, "Terminated Employer") in this Plan. If the Lead Employer acts under this Section 12.12, the following will occur:

(A) Notice. The Lead Employer will give the Terminated Employer a notice of the Lead Employer's intent to terminate the Terminated Employer's status as a

Participating Employer of the Plan. The Lead Employer will provide such notice not less than 30 days prior to the Effective Date of termination unless the Lead Employer determines that the interests of Plan Participants requires earlier termination.

(B) Spin-off. The Lead Employer will establish a new Defined Contribution Plan, using the provisions of this Plan with any modifications contained in the Terminated Employer's Participation Agreement, as a guide to establish a new Defined Contribution Plan (the "Spin-off Plan"). The Lead Employer will direct the Trustee to transfer (in accordance with the rules of Code §414(l) and the provisions of Section 11.06) the Accounts of the Employees of the Terminated Employer to the Spin-off Plan. The Terminated Employer will be the Employer, Plan Administrator, and Sponsor of the Spin-off Plan. The Trustee of the Spin-off Plan will be the person or entity designated by the Terminated Employer, or, in the absence of any such designation, the Terminated Employer itself. If state law prohibits the Terminated Employer from serving as Trustee, the Trustee is the president of a corporate Terminated Employer, the managing partner of a partnership Terminated Employer, the managing member of a limited liability company Terminated Employer, the sole proprietor of a proprietorship Terminated Employer, or in the case of any other entity type, such other person with title and responsibilities similar to the foregoing. Notwithstanding the preceding sentence, the Lead Employer may designate a financial institution as Trustee if the Lead Employer, in its sole discretion, deems it necessary to protect the interests of the Participants. The Lead Employer may charge the Terminated Employer or the Accounts of the Employees of the Terminated Employer with the reasonable expenses of establishing the Spin-off Plan.

(C) Alternatives. The Terminated Employer, in lieu of the Lead Employer's creation of the Spin-off Plan under Section 12.12(B), may elect one of the two other alternatives under Sections 12.12(C)(1) or (2) to effect the termination of its status as a Participating Employer. To elect an alternative, the Terminated Employer must give notice to the Lead Employer of its choice, and must supply any documentation which the Lead Employer reasonably may require as soon as is practical and before the Effective Date of termination. If the Lead Employer has not received such notice and any required documentation within 5 days prior to the Effective Date of termination, the Lead Employer may proceed with the Spin-off Plan under Section 12.12(B).

(1) Distribution. The Lead Employer will direct the Trustee to distribute the Account Balances of the Employees of the Terminated Employer as soon as practical after termination. However, if such an Employee also is employed by another Participating Employer, the Trustee will not distribute, but will continue to hold that Employee's Account Balance pursuant to the terms of the Plan. All Account Balances distributed under this Section 12.12(C)(1) will be 100% Vested. However, no such distribution may violate the restrictions of Sections 6.01(C)(4)(b) and (c). If this Plan includes Restricted 401(k) Accounts under Section 6.01(C)(4)(b), the termination of the Participating Employer's sponsorship of this Plan will be deemed to be a termination of the Plan and

the Plan Year as to the Employees receiving distributions under this Section 12.12(C)(1); however, the Terminated Employer must deliver to the Lead Employer such documentation or other assurances that the Plan Administrator reasonably requires to affirm that the Terminated Employer has neither established nor will establish an Alternative Defined Contribution Plan in violation of Section 11.05(F).

(2) Transfer. The Lead Employer will direct the Trustee to transfer (in accordance with the rules of Code §414(l) and the provisions of Section 11.06) the Accounts of the Employees of the Terminated Employer to a qualified plan the Terminated Employer maintains. Under this Section 12.12(C)(2), the Terminated Employer must deliver to the Lead Employer in writing such identifying and other relevant information regarding the transferee plan and must provide such assurances as the Lead Employer may reasonably require that the transferee plan is a qualified plan.

(D) Participants. The Employees of the Terminated Employer will cease to be eligible to accrue additional benefits under the Plan with respect to Compensation paid by the Terminated Employer, as of the Effective Date of the termination. To the extent that these Employees have accrued but unpaid contributions as of such Effective Date, the Terminated Employer will pay such amounts to the Plan or to the Spin-off Plan no later than 30 days after the Effective Date of termination, unless the Terminated Employer has elected the transfer alternative under Section 12.12(C)(2).

(E) Consent. By its execution of the Participation Agreement, the Terminated Employer specifically consents to the provisions of this Article XII, and in particular, this

Section 12.12 and agrees to perform its responsibilities with regard to the Spin-off Plan, if necessary.

12.13 VOLUNTARY TERMINATION. A Participating Employer (hereafter "Withdrawing Employer") may voluntarily withdraw from participation in the Plan at any time. If and when a Withdrawing Employer wishes to withdraw, the following will occur:

(A) Notice. The Withdrawing Employer will inform the Lead Employer and the Plan Administrator of its intention to withdraw from the Plan. The Withdrawing Employer must give the notice not less than 30 days prior to the Effective Date of its withdrawal.

(B) Procedure. The Withdrawing Employer and the Lead Employer will agree upon procedures for the orderly withdrawal of the Withdrawing Employer from the Plan. Such procedures, as they relate to the Accounts of the Employees of the Withdrawing Employer, may include any alternative described in Sections 12.12(B) and (C).

(C) Costs. The Withdrawing Employer will bear all reasonable costs associated with withdrawal and transfer under this Section 12.13.

(D) Participants. The Employees of the Withdrawing Employer will cease to be eligible to accrue additional benefits under the Plan as to Compensation paid by the Withdrawing Employer, as of the Effective Date of withdrawal. To the extent that such Employees have accrued but unpaid contributions as of such Effective Date, the Withdrawing Employer will contribute such amounts to the Plan or the Spin-off Plan promptly after the Effective Date of withdrawal, unless the Accounts are transferred to a qualified plan the Withdrawing Employer maintains.

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Trust Fund. 1.64
Trustee. 1.65
ULT. 6.02(E)(10)
USERRA. 1.68
Valuation Date. 1.66, 7.04(B)(2)
Valuation Period. 7.04(B)(3)
VCY. 6.02(E)(11)
Vested/Vesting. 1.67
Vesting Computation Period. 5.05(B)
Volume Submitter Plan. 1.69
W-2 Wages. 1.11(B)(1)
Worksite Employee. 12.02(D)(2)
Year of Service. 2.02(A), 5.05(A)

(Multicurrency — Cross Border)

ISDA[®]

International Swap Dealers Association, Inc.

MASTER AGREEMENTdated as of **July 12, 2011****RBS CITIZENS, N.A.**
("Party A")

and

LKQ CORPORATION
("Party B")

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations**(a) General Conditions.**

- (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
- (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
- (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

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(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

(1) promptly notify the other party ("Y") of such requirement;

(2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;

(3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:—

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:

(a) **Basic Representations.**

- (i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;
- (ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

- (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or
- (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

- (1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or
- (2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) **Right to Terminate.** If:—

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) **Effect of Designation.**

- (i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.
- (ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

- (i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.
- (ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:—

- (1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.
- (2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) *Second Method and Market Quotation.* If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

8. Contractual Currency

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into this Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term “rate of exchange” includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) **Separate Indemnities.** To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) **Counterparts and Confirmations.**
- (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
 - (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

10. Offices; Multibranch Parties

- (a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.
- (b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.
- (c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:—

"Additional Termination Event" has the meaning specified in Section 5(b).

"Affected Party" has the meaning specified in Section 5(b).

"Affected Transactions" means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

"Affiliate" means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"Applicable Rate" means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

"Burdened Party" has the meaning specified in Section 5(b).

"Change in Tax Law" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

"consent" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement. **"Credit Support Provider"** has the meaning specified in the Schedule.

"Default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

"Defaulting Party" has the meaning specified in Section 6(a).

"Early Termination Date" means the date determined in accordance with Section 6(a) or 6(b)(iv). **"Event of Default"** has the meaning specified in Section 5(a) and, if applicable, in the Schedule. **"Illegality"** has the meaning specified in Section 5(b).

"Indemnifiable Tax" means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

"law" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and **"lawful"** and **"unlawful"** will be construed accordingly.

"Local Business Day" means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

"Loss" means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

"Market Quotation" means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have

been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

“**Non-default Rate**” means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

“**Non-defaulting Party**” has the meaning specified in Section 6(a).

“**Office**” means a branch or office of a party, which may be such party’s head or home office.

“**Potential Event of Default**” means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“**Reference Market-makers**” means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city. “**Relevant Jurisdiction**” means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

“**Scheduled Payment Date**” means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

“**Set-off**” means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

“**Settlement Amount**” means, with respect to a party and any Early Termination Date, the sum of:—

- (a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and
- (b) such party’s Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

“**Specified Entity**” has the meaning specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

"Stamp Tax" means any stamp, registration, documentation or similar tax.

"Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

"Tax Event" has the meaning specified in Section 5(b).

"Tax Event Upon Merger" has the meaning specified in Section 5(b).

"Terminated Transactions" means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

"Termination Currency" has the meaning specified in the Schedule.

"Termination Currency Equivalent" means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(c), be selected in good faith by that party and otherwise will be agreed by the parties.

"Termination Event" means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

"Termination Rate" means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

"Unpaid Amounts" owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market

value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

RBS CITIZENS, N.A.

By:



Name: MICHAEL J. LIBERATORE
Title: AVP

LKQ CORPORATION

By:



Name: JOHN S. QUINN
Title: EXECUTIVE VICE PRESIDENT AND CHIEF FINANCIAL OFFICER

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SCHEDULE
to the Master Agreement
dated as of **July 12, 2011**
between

RBS CITIZENS, N.A., a national bank organized under the laws of the United States of America ("Party A") and **LKQ CORPORATION**, a corporation organized under the laws of Delaware ("Party B")

Part 1
Termination Provisions

In this Agreement:

(a) "**Specified Entity**" means in relation to Party A for the purpose of:

Section 5(a)(v),	NONE
Section 5(a)(vi),	NONE
Section 5(a)(vii),	NONE
Section 5(b)(iv),	NONE

and in relation to Party B for the purpose of:

Section 5(a)(v),	MATERIAL AFFILIATES OF PARTY B
Section 5(a)(vi),	MATERIAL AFFILIATES OF PARTY B
Section 5(a)(vii),	MATERIAL AFFILIATES OF PARTY B
Section 5(b)(iv),	MATERIAL AFFILIATES OF PARTY B

(b) "**Specified Transaction**" will have the meaning given to it in Section 14 of this Agreement.

(c) The "**Cross Default**" provisions of Section 5 (a)(vi) will apply to Party A and to Party B but shall exclude any default that results solely from wire transfer difficulties or an error or omission of an administrative or operational nature (so long as sufficient funds are available to the relevant party on the relevant date), but only if payment is made within three Local Business Days after such transfer difficulties, or the error or omission has been discovered.

If such provisions apply:

“Specified Indebtedness” means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money and any Derivative Transaction other than any Specified Transaction, except that indebtedness or obligations in respect of deposits received in the ordinary course of a party’s banking business shall not constitute Specified Indebtedness.

“Threshold Amount” means

(i) with respect to Party A, 3% of the stockholders’ equity (however described) of Citizens Financial Group, Inc. as shown on the most recent annual audited financial statements of Citizens Financial Group, Inc. and

(ii) with respect to Party B, or any Specified Entity or Credit Support Provider, 2% of the stockholders’ equity (however described) of Party B or the relevant Specified Entity or the Credit Support Provider as shown on the most recent annual audited financial statements of Party B or the relevant Specified Entity or the Credit Support Provider or financial statements acceptable to Party A in its sole discretion.

(d) **The “Credit Event Upon Merger”** provisions of Section 5(b)(iv) will apply to Party A and will apply to Party B, amended as follows:

“Credit Event Upon Merger” shall mean that a Designated Event (as defined below) occurs with respect to a party, any Credit Support Provider of the party or any applicable Specified Entity (any such party or entity, “X”), and such Designated Event does not constitute an event described in Section 5(a)(viii) but the creditworthiness of X, or, if applicable, the successor, surviving or transferee entity of X, is materially weaker than that of X immediately prior to such event. In any such case the Affected Party shall be the party with respect to which, or with respect to the Credit Support Provider or Specified Entity of which, the Designated Event occurred, or, if applicable, the successor, surviving or transferee entity of such party. For purposes hereof, a Designated Event means that, after the date hereof:

(i) X consolidates, amalgamates with or merges with or into, or transfers all or substantially all its assets to, or receives all or substantially all the assets or obligations of, another entity; or

(ii) any person or entity acquires directly or indirectly the beneficial ownership of equity securities having the power to elect a majority of the board of directors of X or otherwise acquires directly or indirectly the power to control the policy-making decisions of X.”

(e) **The “Automatic Early Termination”** provision of Section 6(a) will not apply to Party A and will not apply to Party B.

(f) **“Payments on Early Termination”**. For the purpose of Section 6(e) of this Agreement:

(i) Loss will apply.

(ii) The Second Method will apply.

(g) **“Termination Currency”** means United States Dollars.

(h) **“Additional Termination Event”** will apply. Each of the following shall constitute an Additional Termination Event:

(i) (A) The expiration, termination, or acceleration of any Credit Support Document, or (B) the failing or ceasing of any Credit Support Document to be in full force and effect, or (C) an event of default or termination event (howsoever defined or described, and, after taking into account any applicable notice and cure periods) under any Credit Support Document, in each case prior to the satisfaction of all obligations of Party B to Party A or any of Party A’s Affiliates whether under this Agreement or otherwise;

(ii) Party A or any of its Affiliates terminates its obligation to extend credit to Party B, any Specified Entity of Party B, or any Credit Support Provider of Party B, for any reason (including as a result of a pre-payment of borrowed money by Party B, any Specified Entity or any Credit Support Provider of Party B); or

(iii) Any collateral, security interest, or other credit support which secures the performance obligations of Party B to Party A or any of its Affiliates, whether under this Agreement or otherwise, (A) becomes unavailable to secure or ceases to secure Party B’s obligations, or (B) no longer secures Party B’s obligations at the same level of seniority as at the date of this Agreement, or (C) ceases to equally and ratably secure the obligations of Party B to Party A or any of its Affiliates with the senior lenders of Party B, its Specified Entity or its Credit Support Provider, or (D) is released at any time for any reason.

For the purpose of the foregoing Additional Termination Events, Party B shall be deemed to be the Affected Party.

Part 2
Tax Representations

(a) **Payer Tax Representation.** For the purpose of Section 3(e), Party A and Party B hereby make the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e)) to be made by it to the other party under this Agreement. In making this representation, it may rely on:

(i) the accuracy of any representation made by the other party pursuant to Section 3(f);

(ii) the satisfaction of the agreement of the other party contained in Section 4(a)(i) or 4(a)(iii) and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii); and

(iii) the satisfaction of the agreement of the other party contained in Section 4(d);

provided that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) **Payee Tax Representations.** For the purpose of Section 3(f), Party A and Party B make the representation(s) specified below:

- (i) The following representation applies to Party A:
Party A is a national bank organized under the laws of the United States of America.
- (ii) The following representation applies to Party B:
Party B is a corporation organized under the laws of Delaware.

**Part 3
Agreement to Deliver Documents**

For the purpose of Sections 4(a) (i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

(a) Tax forms, documents or certificates to be delivered are:

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered
Party A and Party B	Department of the Treasury Internal Revenue Service Form W-9	On or before execution of this Agreement

(b) Other documents to be delivered are:

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
Party A	Signature authentication satisfactory to the other party.	Upon request by Party B	YES
Party B	Signature authentication satisfactory to the other party.	On or before execution of this Agreement	YES
Party B	Copy (certified by an officer) of the board resolution (or equivalent authorizing documentation) permitting the entering into of this Agreement and Transactions hereunder in the form satisfactory to the other party.	On or before execution of this Agreement	YES
Party B	Audited annual financial statements and unaudited quarterly financial statements, and related statement of earnings and changes in financial condition, each prepared in accordance with generally accepted accounting principles and reasonably satisfactory to Party A.	Upon request by Party A	Yes

(a) **Addresses for Notices.** For the purposes of Section 12(a) of this Agreement:

- (i) All notices or communications to Party A shall, with respect to a particular Transaction, be sent to the address, telex number, or facsimile number reflected in the Confirmation of that Transaction, and any notice for purposes of Sections 5 or 6 shall be sent to:

Address: RBS Citizens, N.A.
One Citizens Plaza
Providence, RI 02903
Attention: Mr. Michael Smith
Treasury Operations
Telephone: (401) 282-7250
Facsimile: (401) 282-7718

with a mandatory copy to:

Address: RBS Citizens, N.A.
One Citizens Plaza
Providence, RI 02903
Attention: Kristin Lenda
Telephone: (312) 777-8042
Facsimile: (312) 777-4003

and

Address: c/o RBS Securities Inc.
600 Washington Boulevard
Stamford, CT 06901
Attention: Legal Department — Derivatives Documentation
Telephone: (203) 897-2531/2560
Facsimile: (203) 873-4606

- (ii) All notices or communications to Party B shall be sent to the address, telex number, or facsimile number reflected below:

Address: LKQ Corporation
500 W. Madison Street, Suite 2800
Chicago, IL 60661
Attention: Chief Financial Officer
Telephone: (312) 621-1950
Facsimile: (312) 621-1529

(iii) **Notices.** Section 12(a) is amended by adding in the third line thereof after the phrase "messaging system" and before the ")" the words "; provided, however, any such notice or other communication may be given by facsimile transmission (it being agreed that the sender shall verbally confirm receipt with an officer of the receiving party)".

(b) **Process Agent.** For the purpose of Section 13 (c) of this Agreement:

Party A appoints as its Process Agent: Not applicable.

Party B appoints as its Process Agent: Not applicable.

(c) **Offices.** Section 10(a) will apply to this Agreement.

(d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:

(i) Party A is not a Multibranch Party.

(ii) Party B is not a Multibranch Party.

(e) **Calculation Agent.** The Calculation Agent is Party A, provided, that if an Event of Default with respect to Party A has occurred and is continuing, the parties agree to appoint jointly and expeditiously an independent leading dealer in the relevant underlying market to make the relevant calculation. Such dealer shall be selected in good faith from among dealers of the highest credit standing and such dealer's calculation shall be binding and conclusive absent manifest error.

(f) **Credit Support Document.** Details of any Credit Support Document:

With respect to Party A: not applicable; and

With respect to Party B: any agreement by Party B or Party B's Affiliates (i) in respect of any obligation to repay borrowed money or to reimburse amounts paid under a letter of credit (including any interest or similar amounts with respect thereto) to Party A or any of Party A's Affiliates, including but not limited to any reimbursement agreement or any security agreement, or (ii) that by its terms secures, collateralizes or provides credit enhancement of Party B's obligations to Party A or any of Party A's Affiliates whether under this Agreement or otherwise.

(g) **Credit Support Provider.** Credit Support Provider means:

With respect to Party A: not applicable; and

With respect to Party B: any entity other than Party B that provides a Credit Support Document and each party to a Credit Support Document that provides or is obligated to provide security, a guaranty or other credit support for Party B's obligations hereunder.

(h) **Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York (without reference to choice of law doctrine).**

- (i) **Netting of Payments.** Subparagraph (ii) of Section 2 (c) of this Agreement will apply.
- (j) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement.
- (k) **Transfer.** Section 7 of the Agreement shall be amended as follows:
 - (i) inserting the following phrase "which consent shall not be unreasonably withheld or delayed" in the third line thereof after the word "party" and before the word "except;" and
 - (ii) Party A may assign its rights and obligations under this Agreement, in whole and not in part, to any Affiliate of Party A effective upon delivery to Party B of notice of such transfer, provided that such Affiliate has equal or better creditworthiness as Party A.

**Part 5
Other Provisions**

- (a) **Definitions.** The definitions and provisions contained in the 2006 ISDA Definitions (the "2006 ISDA Definitions") as published by the International Swaps and Derivatives Association, Inc. are hereby incorporated into this Agreement by reference. For these purposes, all references in the 2006 ISDA Definitions to a "Swap Transaction" shall be deemed to apply to each Transaction entered into hereunder.
- (b) **Set-off.** Section 6 of this Agreement is hereby amended by adding the following subsection at the end thereof:

" (f) **Set-Off.** Without affecting the provisions of this Agreement requiring the calculation of certain net payment amounts, all payments under this Agreement will be made without set off or counterclaim, except as provided as follows in this Section 6(f): Any amount (the "*Early Termination Amount*") payable to one party (the Payee) by the other party (the Payer) under Section 6(e), in circumstances where there is a Defaulting Party or one Affected Party under either the Termination Event in Section 5(b)(iv) (if made applicable) or any Additional Termination Event will, at the option of the Non-Defaulting or non-Affected Party (as the case may be) (in either case "X") (and without prior notice to the Defaulting Party or the Affected Party — in either case, "Y") be reduced by its set-off and re-coupment against any amount(s) (the "Other Agreement Amount(s)") payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) or undertaking(s) between the parties or instruments issued or executed by one party to, or in favor of, the other party (and the Other Agreement Amount(s) will be discharged promptly and in all respects to the extent it is so set-off). X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Agreement Amount(s) (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which X would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) shall be effective to create a charge or other security interest. This Section 6(f) shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise”).

- (c) **Representations and Warranties.** Section 3(a) is amended by adding the following paragraphs (vi), (vii) and (viii):

“(vi) **No Agency.** It is entering into this Agreement and each Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise).

(vii) **Eligible Contract Participant.** Each of Party A and Party B represents to the other (which representation shall be deemed repeated on each date a Transaction is entered into or amended) that it is an “eligible contract participant” as defined in the Commodity Exchange Act, as amended, and as such term may be further amended or interpreted under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(viii) **Anti-Money Laundering.** It has adopted and implemented anti-money laundering policies, procedures and controls that comply and will continue to comply in all respects with the requirements of the anti-money laundering laws and regulations to which it is subject, and it strictly adheres to such policies, procedures and controls. In accordance with these policies, procedures and controls, it verifies the identities of, and conducts due diligence (and, where appropriate, enhanced due diligence) with regard to its customers.”

- (d) **Additional Party B Representation.** Party B represents to Party A that the terms and conditions of this Agreement are no less favorable than the terms and conditions that Party B has with its other ISDA Agreement counterparties.

- (e) **Relationship Between Parties.** In connection with the negotiation of, the entering into, of this Agreement, and any other documentation relating to this Agreement to which it is a party or that it is required by this Agreement to deliver, each party hereby represents and warrants, and, in connection with the negotiation of, the entering into, and the confirming of the execution of each Transaction, each party will be deemed to represent, to the other party as of the date hereof (or, in connection with any Transaction, as of the date which it enters into such Transaction) that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):-

(i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction.

(ii) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

(iii) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.

(iv) **Related Transactions.** It is aware that each other party to this Agreement and its Affiliates may from time to time (A) take positions in instruments that are identical or economically related to a Transaction or (B) have an investment banking or other commercial relationship with the issuer of an instrument underlying a Transaction.

- (f) **Waiver of Jury Trial.** Each party hereby irrevocably waives any and all right to trial by jury in any suit, action or proceeding arising out of or relating to this Agreement or any Transaction and acknowledges that this waiver is a material inducement to the other party's entering into this Agreement.
- (g) **Consent to Recording.** Each party hereto consents to the monitoring or recording, at any time and from time to time, by the other party of the telephone conversations of trading and marketing personnel of the parties and their authorized representatives in connection with this Agreement or any Transaction or potential Transaction; and the parties, waive any further notice of such monitoring or recording and agree to give proper notice and obtain any necessary consent of such personnel for any such monitoring or recording.
- (h) **Outstanding Specified Transactions.** Upon the effectiveness of this Agreement, all Specified Transactions then outstanding between the parties (regardless of when entered into), shall, unless the parties express their intent to not be subject to this Agreement by referencing the date hereof and this Part 5(g), be subject to the terms hereof.
- (i) **Severance.** In the event any one or more of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable in any respect, such provisions shall be severed from this Agreement to the extent of such invalidity, illegality or unenforceability, unless such severance shall substantially impair the benefits of the remaining portions of this Agreement. The Agreement after such severance shall remain the valid, binding and enforceable obligation of the parties hereto.
- (j) **Payment Instructions.** All payments to be made hereunder in respect of Transactions shall be made in accordance with standing payment instructions provided by the parties (or as otherwise specified in a Confirmation).
- (k) **Collateral and Security Interest.** Party B hereby agrees that the obligations that are secured by any collateral or security interest granted pursuant to the Credit Support Documents with respect to Party B shall include any obligation pursuant to this Agreement and hereby represents and covenants that any approvals or consents that are necessary to make this Part 5(j) enforceable have been obtained.

- (l) **Definitions.**
- (i) The following definition shall appear in Section 14 after the definition of "Defaulting Party":
- "Derivative Transaction" means:
- (a) any transaction (including an agreement with respect thereto) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index forward, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, repurchase transaction, reverse repurchase transaction, precious metals transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions); and
- (b) any combination of these transactions."
- (ii) The following definition shall appear in Section 14 after the definition of "Loss":
- "Material Affiliates" means all Affiliates that have more than 5% of the total consolidated group assets or account for more than 10% of total consolidated group income, in each case as reflected on the most recent audited consolidated financial statements of the group or financial statements acceptable to Party A in its sole discretion."
- (m) **Confidential Information.** Party A may share any information concerning Party B with its Affiliates to the extent it deems advisable or necessary to carry out the obligations and rights provided for it under this Agreement.
- (n) **Negative Pledge/Equally Ratable.** So long as any of the obligations under this Agreement remain outstanding, Party B will not create any mortgage, pledge, lien or other security interest (each a "Security Interest") on any of its assets unless (i) a Security Interest arises by operation of law, or (ii) Party A agrees to the creation of a Security Interest. If Party A agrees to the creation of a Security Interest, Party A shall be entitled equally and ratably to the benefits of an equivalent Security Interest to secure performance of all obligations of Party B under this Agreement.

Part 6
FX Transactions and Currency Option Transactions

- (a) The 1998 FX and Currency Option Definitions.
- (i) The provisions of the 1998 FX and Currency Option Definitions as published by ISDA, Emerging Markets Traders Association and The Foreign Exchange Committee (the "FX Definitions"), are hereby incorporated herein in their entirety and shall apply to FX Transactions and Currency Option Transactions entered into by the Offices of the parties specified in Part 4(c) of this Agreement. FX Transactions, Currency Obligations and Currency Option Transactions are each deemed to be Transactions for purposes of this Agreement.

(ii) Unless otherwise agreed to by the parties, all FX and Currency Option Transactions entered into between the parties prior to the date of this Agreement shall be deemed to be Transactions for purposes of this Agreement. The confirmation of all FX and Currency Option Transactions via any electronic media, telex, facsimile or writing shall constitute a "Confirmation" as referred to in this Agreement even where not so specified in the Confirmation. Such Confirmations will supplement, form a part of, and be subject to this Agreement.

(b) Article 3 General Terms Relating to Currency Option Transactions.

The FX Definitions are hereby amended by adding the following new Section 3.9:

"3.9. Discharge and Termination of Options. Unless otherwise agreed, any Call or Put written by a party will automatically be terminated and discharged, in whole or in part, as applicable, against a Call or Put, respectively, written by the other party, such termination and discharge to occur automatically upon the payment in full of the last Premium payable in respect of such Currency Option Transaction; provided that such termination and discharge may only occur in respect of Currency Option Transactions with the same material terms, including but not limited to:

- (i) each being with respect to the same Put and the same Call (i.e., a Put may only be discharged against another Put and not against a Call);
- (ii) each having the same Expiration Date and Expiration Time;
- (iii) each being of the same style (i.e., either both being of American or European Style);
- (iv) each having the same Strike Price;
- (v) neither of which shall have been exercised;
- (vi) each of which has been entered into by the same pair of Designated Netting Offices of the parties; and
- (vii) each having the same procedures for exercise;

and, upon the occurrence of such termination and discharge, neither party shall have any further obligation to the other party in respect of the relevant Currency Option Transactions terminated and discharged. In the case of a partial termination and discharge (i.e., where the relevant Currency Option Transactions are for different amounts of the Currency Pair), the remaining portion of the Currency Option Transaction shall continue to be a Currency Option Transaction for all purposes hereunder."

Please confirm your agreement to the terms of the foregoing Schedule by signing below.

RBS CITIZENS, N.A.

By:



Name: MICHAEL J. LIBERATORE
Title: AVP

LKQ CORPORATION

By:



Name: JOHN S. QUINN
Title: EXECUTIVE VICE PRESIDENT AND CHIEF FINANCIAL OFFICER

3 October 2011

**AGREEMENT FOR THE SALE AND PURCHASE OF SHARES IN THE
CAPITAL OF EURO CAR PARTS HOLDINGS LIMITED**

- (1) DRACO LIMITED
- (2) LKQ EURO LIMITED
- (3) LKQ CORPORATION

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Set-Off Escrow Account Instruction Letter
Letter of Appointment (for David Bevan)
Appointment Variation (for Neil Brown)

THIS AGREEMENT is made on October 3, 2011

BETWEEN:

- (1) **DRACO LIMITED** , a company incorporated in Jersey (registered number 88756) whose registered office is at No.2, The Forum, Grenville Street, Jersey JE1 4HH ("**Seller** ");
- (2) **LKQ EURO LIMITED** , a company incorporated in England and Wales (registered number 07780838) whose registered office is at c/o K&L Gates LLP, One New Change, London EC4M 9AF; ("**Buyer** "); and
- (3) **LKQ CORPORATION** , a company incorporated in the State of Delaware whose principal office is at 500 West Madison Street, Suite 2800 Chicago IL 60661, USA ("**Guarantor** ").

RECITALS:

- (A) The Company (as defined below) is a private company limited by shares. Further details of the Company are set out in part 1 of schedule 1.
- (B) The Seller wishes to sell and the Buyer wishes to buy all of the shares in the capital of the Company held by the Seller on the terms of this Agreement.
- (C) The Buyer also wishes to purchase all of the Flowering Shares from the Flowering Shareholders pursuant to the terms of the Flowering Shareholders SPAs.
- (D) The Guarantor has agreed to guarantee the performance by the Buyer of its obligations under this Agreement.

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, the following words and expressions shall have the following meanings unless the context requires otherwise:

" **2009 Group Reorganisation** " means the group reorganisation carried out in 2009 as more particularly described in the Group Restructuring Memorandum prepared by Grant Thornton dated 14 October 2009, a copy of which is at document B2 attached to the Disclosure Letter;

" **2012 Earn-out Loan Notes** " means the Series B 2012 Loan Notes and the Series D 2012 Loan Notes;

" **2013 Earn-out Loan Notes** " means the Series B 2013 Loan Notes and the Series D 2013 Loan Notes;

" **2012 Earn-out Period** " means the period starting on 1 January 2012 and ending on 31 December 2012;

" **2012 EBITDA** " means the EBITDA for the 2012 Earn-out Period;

“ **2012 EBITDA Target** ” means the sum agreed in writing between the parties for such purpose or such other adjusted amount as is agreed between the parties in accordance with this Agreement;

“ **2012 Initial EBITDA Amount** ” means the sum agreed in writing between the parties for such purpose;

“ **2013 Earn-out Period** ” means the period starting on 1 January 2013 and ending on 31 December 2013;

“ **2013 EBITDA** ” means the EBITDA for the 2013 Earn-out Period;

“ **2013 EBITDA Target** ” means the sum agreed in writing between the parties for such purpose or such other adjusted amount as is agreed between the parties in accordance with this Agreement;

“ **2013 Initial EBITDA Amount** ” means the sum agreed in writing between the parties for such purpose;

“ **Accounts** ” means:

- (i) the audited group financial statements of the Company for the financial year ended on the Accounts Date (including the group profit and loss account, the group balance sheet, the Company balance sheet, the Company profit and loss account, the group cash flow statement and all notes), together with the directors’ report and the auditor’s report; and
- (ii) the financial statements of each of the Subsidiaries for the financial year ended on the Accounts Date (including, in each case, the profit and loss account, the balance sheet, the cash flow statement (where applicable) and all notes), together with the directors’ report and the auditor’s report, such financial statements having been audited in the case of each of the Active Companies,

and in schedule 2 the “**Company Accounts** ” means the Accounts of the relevant Group Company and “**Group Accounts** ” means the consolidated Accounts of the Group Companies;

“ **Accounts Date** ” means 31 December 2010;

“ **Active Companies** ” means the Company, ECP, ADS and VDS;

“ **Actual Cash Amount** ” means the aggregate amount of Cash on the balance sheets of each of the Group Companies other than ADS and VDS as at the Effective Date determined in accordance with clause 4 and schedule 10;

“ **Actual Debt and Finance Lease Amount** ” means the amount outstanding in respect of the Debt and Finance Leases as at the Effective Date determined in accordance with clause 4 and schedule 10 (expressed as a positive number);

“ **Actual Pro-rata Bonus** ” means the aggregate gross amount of the bonuses actually paid to the Bonus Recipients in respect of the calendar year 2011 plus an amount equal to the Class 1 secondary ‘employer’s’ national insurance contributions payable by any Group Company in respect thereof, multiplied by (X÷365) where X equals the number of days that have elapsed between (and including) 1 January 2011 and the Effective Date;

“ **Adjustment** ” means the Bonus Adjustment, the Tax Adjustment, the Cash Adjustment or the Debt Adjustment as the context requires;

“ **ADS** ” means Automotive Data Services Limited, brief details of which are set out in part 2 of schedule 1;

“ **ADS/VDS Indemnity** ” means the indemnity in clause 13.16;

“ **ADS/VDS Indemnity Claim** ” means a claim under the indemnity in clause 13.16;

“ **ADS/VDS Tax Covenant Claim** ” means a claim under the provisions of part 3 of schedule 3 that relates to ADS and/ or VDS;

“ **Agent** ” means (i) any person appointed by a power of attorney or similar instrument granted by any Group Company empowering that person to represent a Group Company in matters and dealings by or involving such Group Company, and (ii) any agent, sales representative, sponsor or other person appointed or retained to assist any Group Company to obtain business or promote the distribution, marketing or sales of products or services of any Group Company;

“ **Anti-Corruption Laws** ” means, collectively, (i) the United States Foreign Corrupt Practices Act, (ii) applicable laws enacted pursuant to the Organization of Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and (iii) any other applicable law of any jurisdiction in which any Group Company operates or to which it is subject prohibiting bribery and corruption of public officials;

“ **Appointment Letter** ” means the letter of appointment in the agreed form to be entered into at Completion by ECP and David Bevan;

“ **Appointment Variation** ” means the deed of variation in the agreed form to be entered into at Completion between ECP and Neil Brown varying the terms of the letter of appointment dated 4 September 2009 between Neil Brown and the Company;

“ **Bonus Adjustment** ” has the meaning given to it in clause 4.6;

“ **Bonus Estimate** ” means £850,000;

“ **Bonus Recipients** ” means Sukhpal Singh Ahluwalia, Maheshkumar Shah, Paul Stuart Creasey, Stephen James Horne, David John Bevan, Christopher Barella, David William Beak, Arpana Mangrola, Sukhbir Singh Kapoor, Martin Kenneth Gray, William Kenneth Stimson, Andrew Craig Hamilton and Michael Ronald Spalding;

“ **Business Day** ” means a day on which banks are open for business in London and New York, other than Saturday or Sunday;

“ **Business Information** ” means information used by, or relating to the business, affairs, products, services, activities, operations, properties, finances, assets or liabilities of, any Group Company which is confidential or not generally known including:

- (a) customer and supplier lists and confidential other customer-related and supplier-related information;
- (b) sales targets, sales statistics, market share statistics, market research surveys and reports;
- (c) confidential know-how;
- (d) business plans and forecasts and information relating to business development and future projects and commercial relationships; and
- (e) all confidential notices, correspondence, orders, enquiries and accounting, financial and tax books and records,

in each case, in whatever form held;

“ **Business Plan** ” means the three year plan a copy of which is included in the Data Room at documents 2.1.11.1, 2.1.11.2, 4.4.3.13 and 4.4.3.14;

“ **Buyer’s Group** ” means the Buyer, any ultimate parent undertaking of the Buyer for the time being and all direct or indirect subsidiary undertakings for the time being of any such parent undertaking but excluding for the avoidance of doubt the Group Companies;

“ **Buyer’s Solicitors** ” means K&L Gates LLP of One New Change London EC4M 9AF;

“ **Canterbury Documents** ” means:

- (a) the agreement for sale and purchase of leasehold property made between (1) Thorn Limited, (2) ECP and (3) the Seller, a copy of which is contained in the data room at document 1.18.3.17.1; and
- (b) the licence to assign made between (1) Paul Bradley Griffith, (2) Thorn Limited, (3) ECP and (4) the Seller, a copy of which is contained in the Data Room at document 1.18.3.17.2;

“ **Cash** ” shall have the meaning given in schedule 10;

“ **Cash Adjustment** ” has the meaning given to it in clause 4.4;

“ **Cash Estimate** ” means £11,162,820, being the estimated aggregate amount of Cash on the balance sheets of each of the Group Companies other than ADS and VDS as at the Effective Date;

“ **Claims** ” means Tax Claims, Warranty Claims, Indemnity Claims and ADS/VDS Indemnity Claims;

“ **Companies Law** ” means the Companies Act 1985 and the Companies Act 2006, in each case as amended and any equivalent legislation applicable in respect of any overseas companies;

“ **Company** ” means Euro Car Parts Holdings Limited, a private company limited by shares incorporated in England and Wales with registered number 7063752, brief details of which are set out in part 1 of schedule 1;

“ **Completion** ” means completion of the sale and purchase of the Shares in accordance with this Agreement;

“ **Completion Date** ” means the date on which Completion takes place;

“ **Completion Financial Statements** ” means financial statements of the Company for the period commencing on 1 January 2011 and ending on the Effective Date prepared and agreed or determined in accordance with clause 4 and schedule 10 including a balance sheet and profit and loss account for each Group Company and the Group on a consolidated basis;

“ **Compromise Agreement** ” means the compromise agreement in the agreed form to be entered into at Completion between ECP and Parvinder Ahluwalia;

“ **Connected Person** ” means a person who is connected within the meaning given in section 1122 of the Corporation Tax Act 2010 provided that this shall not include any director of the Seller;

“ **Contingent Consideration** ” means the consideration (if any) payable to the Seller and to the Flowering Shareholders pursuant to clause 5 and the Flowering Shareholders SPAs payable in the proportions set out in schedule 9;

“ **Data Room** ” means the “Project Moore” electronic Data Room hosted by Merrill Corporation as contained on identical CDs/DVDs labelled “Project Moore Data Room” and initialled by or on behalf of the Buyer and the Seller;

“ **Debt Adjustment** ” has the meaning given to it in clause 4.5;

“ **Debt and Finance Leases** ” means any borrowing or indebtedness in the nature of borrowing including any indebtedness for moneys borrowed or raised under any acceptance credit, bond, note, bill of exchange or commercial paper, finance lease, hire purchase agreement, trade bills (other than those on terms normally obtained), forward sale or purchase agreement or conditional sale agreement, purchase on deferred terms or other transaction having the commercial effect of a borrowing or any factored debts, including those finance leases details of which are set out in schedule 8;

“**Debt and Finance Lease Estimate**” means £7,700,000, being estimated amount outstanding in respect of the Debt and Finance Leases as at the Effective Date (expressed as a positive number);

“**Deed of Guarantee**” means the deed of guarantee in the agreed form to be entered into at Completion by the Guarantor and the noteholders (as detailed therein) in relation to the Loan Notes;

“**Deed of Undertaking**” means the deed of undertaking in the agreed form to be entered into at Completion by the Buyer and Sukhpal Singh Ahluwalia;

“**Deferred Consideration Loan Notes**” means the Series C 2012 Loan Notes and the Series C 2013 Loan Notes;

“**Disclosure Bundle**” means the bundle of documents in the agreed form attached to the Disclosure Letter;

“**Disclosure Letter**” means the disclosure letter from the Seller to the Buyer, dated with the date of this Agreement;

“**Draco Completion Payment**” means the payment to be made in accordance with clause 3;

“**Draco Loan**” means the interest free loan made by the Seller to the Company, in respect of which the amount of £102,147,666.54 is owing to the Seller by the Company as at the Effective Date;

“**Draco Shares**” means the 2 ordinary shares in the capital of the Company held by the Seller;

“**Draft Completion Financial Statements**” has the meaning given to it in clause 4.1.1;

“**EAR**” means the Export Administration Regulations administered by the U.S. Department of Commerce;

“**Earn-out Periods**” means the 2012 Earn-out Period and the 2013 Earn-out Period;

“**EBITDA**” means earnings of the Group Companies (on a consolidated basis) before interest, tax, depreciation and amortisation as determined in accordance with schedule 7;

“**EBITDA Statement**” means the statement of 2012 EBITDA or 2013 EBITDA as the case may be;

“**ECP**” means Euro Car Parts Limited brief details of which are set out in part 2 of schedule 1;

“**Effective Date**” means 12.01 a.m. on 1 October 2011;

“ **Employment Agreements** ” means the employment agreements in the agreed form to be entered into at Completion between ECP and each of Paul Creasey, Sukhpal Singh Ahluwalia, David Beak, Christopher Barella, Martin Gray, Andrew Hamilton, Stephen Horne, Sukhbir Singh Kapoor, Arpana Mangrola, Maheshkumar Shah, Michael Spalding and William Stimson;

“ **Encumbrance** ” includes any mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption or other third party right, interest or claim of any kind (including imposed by law);

“ **Exchange Rate** ” means with respect to a particular currency on a particular date, the closing mid-point rate for conversion of that currency into pounds sterling on that date or, if that date is not a Business Day, the first Business Day after that date (“ **Relevant Date** ”), as set out in the London edition of the Financial Times first published after the Relevant Date;

“ **Flowering Shares** ” means the 211,714 A ordinary shares of £1 each and the 389,594 B ordinary shares of £1 each in the capital of the Company;

“ **Flowering Shareholders SPAs** ” means the agreements in the agreed form between the Buyer and each of the Flowering Shareholders to be entered into at Completion for the sale and purchase of the Flowering Shares;

“ **Flowering Shareholders** ” means the holders of the Flowering Shares, details of whom and their shareholdings are set out in part 1 of schedule 1;

“ **Freehold Properties** ” means the freehold properties listed in part 1 of document D1 of the Disclosure Bundle;

“ **General Warranties** ” means the Warranties other than the Title Warranties and the Tax Warranties;

“ **General Warranty Claim** ” means a claim for breach of any of the General Warranties;

“ **Government Official** ” includes, (i) any officer, employee or agent of any government (including any government of any country or any political subdivision within a country) or of any department, agency or instrumentality (including any business or corporate entity owned or managed by a government, such as a national oil company or subsidiary thereof) thereof, or any person acting in an official capacity or performing public duties or functions on behalf of any such government, department, agency or instrumentality, (ii) any political party or official thereof, (iii) any candidate for public office, or (iv) any officer, employee or agent of a public international organization, including, but not limited to, the United Nations, the International Monetary Fund and the World Bank;

“ **Group** ” means the Buyer's Group or the Seller's Group as the context requires;

“ **Group Companies** ” means the Company and each of the Subsidiaries, and a reference to a “Group Company” is a reference to any one of them;

“ **ICE Regulations** ” means the Information and Consultation of Employees Regulations 2004;

“ **Inactive Companies** ” means Seebeck 31 Limited, Euro Car Parts Limited (registered in Republic of Ireland), Euro Car Parts (Northern Ireland) Limited, Car Parts 4 Less Limited and Euro Garage Solutions Limited;

“ **Indemnity Claim** ” means a claim under the indemnity in clause 13.13;

“ **Independent Accountant** ” means such firm of accountants as is appointed in accordance with clause 9;

“ **Insolvency Proceedings** ” means any formal insolvency proceedings, whether in or out of court, including proceedings or steps leading to any form of bankruptcy, liquidation, administration, receivership, arrangement or scheme with creditors, moratorium, stay or limitation of creditors’ rights, interim or provisional supervision by a court or court appointee, winding-up or striking-off, or any distress, execution or other process levied;

“ **Insurance Cap** ” means £25,000,000;

“ **Insurance Excess** ” means £2,250,000;

“ **Insurance Policy** ” means the warranties and indemnities insurance policies in relation to Claims taken out by the Buyer with Allied World Assurance Company Limited and Pembroke Syndicate at Lloyd’s with effect from the Completion Date;

“ **Leasehold Properties** ” means the leasehold properties demised by the Leases;

“ **Leases** ” means the leases listed in part 2 of document D1 of the Disclosure Bundle;

“ **Loan Note Instruments** ” means all or any of the instruments constituting the Loan Notes;

“ **Loan Notes** ” means all or any of the Series A Loan Notes, the 2012 Earn-out Loan Notes, the 2013 Earn-out Loan Notes and the Deferred Consideration Loan Notes;

“ **Losses** ” means in relation to any matter, all liabilities, losses, damages, claims, costs, actions, awards, penalties, fines, proceedings, demands and expenses on a full indemnity basis (including all reasonable legal and other professional fees and expenses properly incurred) relating to that matter;

“ **Management Accounts** ” means:

- (a) the unaudited management accounts of each Active Company comprising a balance sheet as at 31 July 2011 and a profit and loss account and cash flow statement (for each Active Company) for the period which began on 1 January 2011 and ended on 31 July 2011 as contained in the Data Room at documents 2.1.1.3, 4.2.2 and 4.2.75 (the “ **July Management Accounts** ”); and

(b) the unaudited management accounts of each Active Company comprising a balance sheet as at 31 August 2011 and a profit and loss account and cash flow statement (for each Active Company) for the period which began on 1 January 2011 and ended on 31 August 2011 as contained in the Data Room at documents 2.1.7.2.1, 4.4.3.4, 4.4.3.5, 4.4.3.8 and 4.4.3.9 (the “**August Management Accounts**”);

“**OFAC**” means the Office of Foreign Assets Control of the U.S. Treasury Department;

“**OFAC Regulations**” means the regulations and Executive Orders administered by OFAC;

“**Pension Schemes**” means:

(i) the Universal Group Personal Pension Plan effected with Phoenix Life (formerly Scottish Mutual); and

(ii) the Euro Car Parts Limited Stakeholder Pension Plan effected with Legal & General;

“**Post-Completion Adjustments**” means the financial statement adjustments made by Buyer’s Group to conform the Completion Financial Statements to the accounting policies of Buyer’s Group;

“**Prohibited Payment**” means any payment or provision of money or anything of value (including any loan, reward, advantage or benefit of any kind), either directly or indirectly, to any Government Official or relative of any Government Official, to influence any act, decision or omission of any Government Official, to obtain or retain business, to direct business to any Group Company or to gain any advantage or benefit for any Group Company. Prohibited Payments do not include: (i) any facilitating payment to a Government Official the purpose of which is to expedite or to secure the performance of a routine governmental action, or (ii) a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a Government Official that is directly related to the execution or performance of a contract with a foreign government or department, agency or instrumentality thereof;

“**Properties**” means the Freehold Properties and the Leasehold Properties;

“**Relief**” has the meaning given to it in part 1 of schedule 3;

“**Representative**” means any appropriate representative (as that expression is used in the Transfer Regulations or TULRCA), negotiating representative (as that expression is used in the ICE Regulations), information and consultation representative (as that expression is used in the ICE Regulations) and the Transnational Information and Consultation of Employees Regulations 1999), employee representative (as that expression is used in the Transnational Information and Consultation of Employees Regulations 1999) or any staff association or trade union representative;

“**Restricted Encumbrance**” means any mortgage, charge, pledge, option, right of first refusal, right of pre-emption or other third party right in the nature of security but excluding reservation of title over goods supplied and excluding liens under third party trading terms or which arise by operation of law and excluding finance leases;

“**Seller’s Estimated CT Liability**” has the meaning given in clause 4.7;

“**Seller’s Group**” means the Seller, any ultimate parent undertaking of the Seller for the time being and all direct or indirect subsidiary undertakings for the time being of any such parent undertaking, but excluding for the avoidance of doubt the Group Companies;

“**Seller’s Proportion**” means in relation to the Seller, the proportion as specified in schedule 9;

“**Seller’s Solicitors**” means Olswang LLP of 90 High Holborn, London WC1V 6XX;

“**Series A Loan Note Instrument**” means the instrument in the agreed form constituting £10,000,000 in aggregate principal amount of unsecured loan notes, to be issued to the Seller and the Flowering Shareholders at Completion;

“**Series A Loan Notes**” means the unsecured loan notes of the Buyer constituted by the Series A Loan Note Instrument;

“**Series B 2012 Loan Note Instrument**” means the instrument in the agreed form constituting such principal amount of unsecured loan notes as shall be required to satisfy the Contingent Consideration payable to the Flowering Shareholders in respect of the 2012 Earn-out Period;

“**Series B 2012 Loan Notes**” means the loan notes of the Buyer constituted by the Series B 2012 Loan Note Instrument;

“**Series B 2013 Loan Note Instrument**” means the instrument in the agreed form constituting such principal amount of unsecured loan notes as shall be required to satisfy the Contingent Consideration payable to the Flowering Shareholders in respect of the 2013 Earn-out Period;

“**Series B 2013 Loan Notes**” means the loan notes of the Buyer constituted by the Series B 2013 Loan Note Instrument;

“**Series C 2012 Loan Note Instrument**” means the instrument in the agreed form constituting £4,169,749 in aggregate principal amount of unsecured loan notes, to be issued at Completion to certain Flowering Shareholders;

“**Series C 2012 Loan Notes**” means the loan notes of the Buyer constituted by the Series C 2012 Loan Note Instrument;

“**Series C 2013 Loan Note Instrument**” means the instrument in the agreed form constituting £4,169,749 in aggregate principal amount of unsecured loan notes, to be issued at Completion to certain Flowering Shareholders;

“ **Series C 2013 Loan Notes** ” means the loan notes of the Buyer constituted by the Series C 2013 Loan Note Instrument;

“ **Series D 2012 Loan Note Instrument** ” means the instrument in the agreed form constituting unsecured loan notes to be issued to certain Flowering Shareholders if required pursuant to clause 5.6;

“ **Series D 2012 Loan Notes** ” means the loan notes of the Buyer constituted by the Series D 2012 Loan Note Instrument;

“ **Series D 2013 Loan Note Instrument** ” means the instrument in the agreed form constituting unsecured loan notes to be issued to certain Flowering Shareholders if required pursuant to clause 5.7;

“ **Series D 2013 Loan Notes** ” means the loan notes of the Buyer constituted by the Series D 2013 Loan Note Instrument;

“ **Set-Off Escrow Account** ” means an account to be opened in the name of the Seller’s Solicitors if required pursuant to clause 7;

“ **Set-Off Escrow Account Instruction Letter** ” means the letter in the agreed form to be delivered at Completion by the Seller and the Buyer to the Seller’s Solicitors giving instructions regarding the Set-off Escrow Account;

“ **Shares** ” means all the issued shares in the capital of the Company, details of which are set out in part 1 of schedule 1;

“ **Subsidiaries** ” means the subsidiary undertakings of the Company, details of which are set out in part 2 of schedule 1;

“ **Tax** ” or “ **Taxation** ” has the meaning given to it in part 1 of schedule 3;

“ **Tax Authority** ” has the meaning given to it in part 1 of schedule 3;

“ **Tax Adjustment** ” has the meaning given to it in clause 4.8;

“ **Tax Claim** ” means a claim under the Tax Covenant including an ADS/VDS Tax Covenant Claim or for any breach of any of the Tax Warranties;

“ **Tax Covenant** ” means the tax covenants given in favour of the Buyer set out in part 3 of schedule 3;

“ **Tax Warranties** ” means the warranties of the Seller relating to Tax given under clause 13.1 which are set out in part 2 of schedule 3;

“ **Title Warranties** ” means the warranties set out at paragraphs 1 and 8 of part 1 of schedule 2;

“ **Transfer Regulations** ” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“ **TULRCA** ” means the Trade Union and Labour Relations (Consolidation) Act 1992;

“ **UK GAAP** ” means generally accepted accounting practice in the United Kingdom incorporating Statements of Standard Accounting Practice and Financial Reporting Standards adopted or issued by the Accounting Standards Board and Abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and in force on the date of this Agreement;

“ **U.S. Trade Laws** ” means each and any U.S. law, regulation and Executive Order imposing restrictions, requirements, conditions or sanctions in connection with international trade activities, including, without limitation, the EAR, the OFAC Regulations, the International Traffic in Arms Regulations administered by the U.S. Department of State, and statutes and Executive Orders authorizing sanctions for trade relating to specified activities, such as proliferation, or countries, such as Iran;

“ **VAT** ” means value added tax as provided for in VATA, and any tax imposed in substitution for it;

“ **VATA** ” means the Value Added Tax Act 1994;

“ **VDS** ” means Vehicle Data Services Limited, brief details of which are set out in part 2 of schedule 1;

“ **Warranties** ” means the warranties of the Seller given under clause 13.1 which are set out in schedule 2 and the Tax Warranties;

“ **Warranty Claim** ” means a claim for any breach of any of the Warranties other than a Tax Warranty;

“ **Wembley Leases** ” means the leases between Property Holdings (Euro) Limited and the ECP dated 12 November 2002 and 3 October 2007 respectively in relation to premises at Fulton Road, Wembley Industrial Estate, HA9 0TF;

“ **Wembley Option Agreement** ” means the agreement in the agreed form to be signed at Completion by Property Holdings (Euro) Limited and ECP relating to options to extend the Wembley Leases;

“ **Wembley Rent Review Memoranda** ” means the memoranda in the agreed form from Property Holdings (Euro) Limited to ECP confirming no increase in the rent in respect of the Wembley Leases;

“ **Wembley Deed** ” means the deed in the agreed form to be signed by Property Holdings (Euro) Limited and ECP at Completion;

“ **Year 2012 Accounts** ” means the consolidated accounts of the Group Companies for the financial year ended on 31 December 2012; and

“ **Year 2013 Accounts** ” means the consolidated accounts of the Group Companies for the financial year ended on 31 December 2013.

- 1.2 In this Agreement, unless the context requires otherwise:
- 1.2.1 any reference to the parties or a recital, clause or schedule is to the parties or the relevant recital, clause or schedule of or to this Agreement, and any reference in a schedule to a paragraph is to a paragraph of the schedule or, where relevant, that part of the schedule;
 - 1.2.2 the clause headings are included for convenience only and shall not affect the interpretation of this Agreement;
 - 1.2.3 use of the singular includes the plural and vice versa;
 - 1.2.4 use of any gender includes the other genders;
 - 1.2.5 “ **financial year** ”, “ **parent undertaking** ” and “ **subsidiary undertaking** ” have the meanings given to them by sections 390 and 1162 of the Companies Act 2006 respectively;
 - 1.2.6 any reference to a statute, statutory provision or subordinate legislation (“ **legislation** ”) shall be construed as referring to that legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation except to the extent that any amendment, re-enactment or consolidation on or after the date of this Agreement would increase the liability of any party under this Agreement;
 - 1.2.7 the words “ **include(s)** ”, “ **including** ” and “ **in particular** ” are to be construed without limitation;
 - 1.2.8 any reference to a document being “ **in the agreed form** ” means a document in a form agreed by the parties before the signing of this Agreement and either entered into on the date of this Agreement by the relevant parties or initialled by the parties or on their behalf, in the latter case with such amendments as they may subsequently agree;
 - 1.2.9 save where otherwise specified in this Agreement, references in this Agreement to a time of day shall be to London time;
 - 1.2.10 any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official, governmental or administrative authority or agency or any legal concept or thing includes, in respect of any jurisdiction other than England, a reference to whatever most closely approximates in that jurisdiction to the relevant English legal term.
- 1.3 The schedules and recitals form part of this Agreement and shall have effect as if set out in full in the body of this Agreement, and any reference to this Agreement includes the schedules and recitals.

- 1.4 Any reference in this Agreement to a sum expressed in pounds sterling in the context of any sum denominated in any other currency (such as for example, but without limitation, a reference in any Warranty to an asset or liability being or having a value in excess of or not in excess of a sum in pounds sterling or a reference in a paragraph in schedule 5 (Limitations on Seller's Liability) to a sum in pounds sterling in the context of the amount or value of one or more Warranty Claims) shall be converted into pounds sterling at the Exchange Rate on the relevant date. In the case of a Warranty Claim or a claim for a breach of the Tax Warranties the relevant date shall be the date at which the Warranty is given and in the case of paragraph 1 of schedule 5 the relevant date shall be the date the Warranty Claim is notified in accordance with paragraph 3.1 of that schedule.
2. **AGREEMENT FOR SALE**
Subject to the terms of this Agreement the Seller shall sell with full title guarantee and, notwithstanding any limitation otherwise implied by the Law of Property (Miscellaneous Provisions) Act 1994, free from all Encumbrances the Draco Shares and the Buyer shall buy the Draco Shares from the Seller. The Draco Shares shall be sold with all rights attaching to them at the date of Completion or subsequently, including the rights to receive all dividends and other distributions declared, paid or made at or after Completion.
3. **CONSIDERATION**
- 3.1 The consideration for the Draco Shares shall comprise the Draco Completion Payment (which shall be payable in accordance with this clause 3) and the Seller's Proportion of the Contingent Consideration (which may be payable in accordance with clause 5) and shall be subject to adjustment in accordance with clause 4.
- 3.2 The Draco Completion Payment shall be £101,447,316, calculated as follows:
- 3.2.1 103,590,526;
- less the aggregate of**
- 3.2.2 £6,913,060 being the Seller's Proportion of the amount of the Debt and Finance Lease Estimate; and
- 3.2.3 £763,130 being the Seller's Proportion of the amount of the Bonus Estimate; and
- 3.2.4 £4,489,000 being the Seller's Proportion of the amount of the Seller's Estimated CT Liability;
- plus**
- 3.2.5 £ 10,021,980 being the Seller's Proportion of the amount of the Cash Estimate.
- 3.3 The Draco Completion Payment shall be satisfied as follows:
- 3.3.1 £92,289,316 in cash; and
- 3.3.2 £9,158,000 by the issue of £9,158,000 in principal amount of Series A Loan Notes.

4. **CONSIDERATION ADJUSTMENTS**

4.1 The Buyer shall:

4.1.1 cause the Company to prepare a draft of the Completion Financial Statements (the “**Draft Completion Financial Statements**”) in accordance with the accounting principles, practices, policies and procedures set out in schedule 10 which shall include a statement of the Actual Cash Amount and the Actual Debt and Finance Lease Amount; and

4.1.2 deliver the Draft Completion Financial Statements to the Seller by no later than 60 Business Days following the Completion Date.

4.2 The Seller shall use reasonable endeavours to agree the Actual Cash Amount and the Actual Debt and Finance Lease Amount within 15 Business Days of the date on which the Draft Completion Financial Statements are delivered to the Seller in accordance with clause 4.1.2 and, if it agrees with the amount of the Actual Cash Amount and the Actual Debt and Finance Lease Amount it shall give written notice to the Buyer of such agreement. If the Seller fails to notify the Buyer in writing that it agrees with the amount of the Actual Cash Amount and the Actual Debt and Finance Lease Amount during that 15 Business Day period and has not given a Cash Notice or a Debt Notice (each as defined in this clause 4.2) (as the case may be), then the Actual Cash Amount and/ or the Actual Debt and Finance Lease Amount (as the case may be) shall be deemed to have been agreed. If the Seller does not agree with the amount of the Actual Cash Amount and/ or the Actual Debt and Finance Lease Amount it may give written notice to the Buyer of the points in dispute setting out, to the extent reasonably practicable, in reasonable detail the reasons why those points are in dispute and its calculation of the Actual Cash Amount and/ or the Actual Debt and Finance Lease Amount (a “**Cash Notice**” or a “**Debt Notice**” as the case may be).

4.3 If the Seller gives a Cash Notice or a Debt Notice to the Buyer within the period of 15 Business Days specified in clause 4.2, the Buyer and the Seller shall attempt in good faith to resolve any outstanding matters and agree the amount of the Actual Cash Amount or the Actual Debt and Finance Lease Amount (as the case may be) within 15 Business Days after the receipt by the Buyer of written notice from the Seller of the points in dispute. The amount of the Actual Cash Amount or the Actual Debt and Finance Lease Amount so agreed by them shall be final and binding on the parties for all purposes. In the absence of agreement between the Buyer and the Seller within that time period, the matters in dispute shall be referred to the Independent Accountant and the Independent Accountant shall be instructed to determine the correct interpretation and application of the provisions of schedule 10 and/ or the amount of the Actual Cash Amount or the Actual Debt and Finance Lease Amount (as the case may be) in accordance with the procedure set out in clause 9.

4.4

Cash Adjustment

Within five Business Days after the date on which the Actual Cash Amount is agreed or determined in accordance with this Agreement, a payment shall be made as follows (“**Cash Adjustment**”):

4.4.1 if the Actual Cash Amount is greater than the Cash Estimate then the Buyer shall pay the amount of the excess to the Seller;

4.4.2 if the Actual Cash Amount is less than the Cash Estimate then the Seller shall pay the amount of the shortfall to the Buyer,

save that if the Actual Cash Amount is the same as the Cash Estimate then no payment shall be made.

4.5

Debt Adjustment

Within five Business Days after the date on which the Actual Debt and Finance Lease Amount is agreed or determined in accordance with this Agreement, a payment shall be made as follows (“**Debt Adjustment**”):

4.5.1 if the Actual Debt and Finance Lease Amount is greater than the Debt and Finance Lease Estimate then the Seller shall pay the amount of the excess to the Buyer;

4.5.2 if the Actual Debt and Finance Lease Amount is less than the Debt and Finance Lease Estimate then the Buyer shall pay the amount of the shortfall to the Seller,

save that if the Actual Debt and Finance Lease Amount is the same as the Debt and Finance Lease Estimate then no payment shall be made.

4.6

Bonus Adjustment

Within five Business Days of the payment of bonuses for the calendar year 2011 to the Bonus Recipients the Buyer shall notify the Seller in writing of the amount paid in cash to the Bonus Recipients and a payment shall be made as follows (“**Bonus Adjustment**”):

4.6.1 if the Actual Pro-rata Bonus is greater than the Bonus Estimate then the Seller shall pay the amount of the excess to the Buyer;

4.6.2 if the Actual Pro-rata Bonus is less than the Bonus Estimate then the Buyer shall pay the amount of the shortfall to the Seller,

save that if the Actual Pro-rata Bonus is the same as the Bonus Estimate then no payment shall be made.

Tax Adjustment

In this clause 4.7, the following definitions shall apply:

“Actual Tax Paid”	means, the total aggregate amount of corporation tax paid by the Group Companies before the Effective Date in respect of the Current Accounting Period;
“corporation tax”	means corporation tax in the United Kingdom and the equivalent in any other jurisdiction in which a Group Company is resident or has a permanent establishment;
“Current Accounting Period”	means the accounting period of a Group Company current at the Effective Date;
“Due Date”	means the last date on which a corporation tax return for a Group Company in respect of the Current Accounting Period is filed;
“Excess”	means the amount by which the Seller's CT Liability exceeds the Seller's Estimated CT Liability;
“instalment”	shall include a one off payment and sum of instalments shall be interpreted in the same way where the context requires;
“Seller's CT Liability”	means an amount equal to the Seller's Percentage of the Total CT Liability, less the Actual Tax Paid;
“Seller's Estimated CT Liability”	means £5,000,000 (such amount representing the amount estimated to be the aggregate corporation tax liability of the Group Companies on the taxable profits of the Group Companies accrued up to the Effective Date for the Current Accounting Period, less the Actual Tax Paid);
“Seller's Percentage”	means $(CP/TP) \times 100$ (expressed as a percentage) where: CP = the aggregate taxable profits of the Group Companies up to the Effective Date, such profits calculated on an accruals basis provided that (i) the payments made to Person A and Person B referred to in paragraph 2.5.6 of schedule 10 shall be assumed to have accrued in full in the period up to the Effective Date, and (ii) for the

avoidance of doubt, capital allowances on qualifying expenditure incurred in the Current Accounting Period shall be apportioned on the basis that X/365 of such allowances are available in the period up to the Effective Date, where X equals the number of days that have elapsed between (and including) 1 January 2011 and the Effective Date; and

TP = total aggregate taxable profits of the Group Companies for the Current Accounting Period.

For the purposes of this definition, in calculating taxable profits any group relief claims from the Buyer's Group shall be ignored;

“Shortfall”

means the amount by which the Seller's CT Liability is less than the Seller's Estimated CT Liability; and

“Total CT Liability”

means the sum of the instalments paid both before and after Completion in respect of the corporation tax liability of the Group Companies for the Current Accounting Period.

4.8 Within five Business Days of the Due Date, the Buyer shall notify the Seller in writing of the amount (if any) to be paid in cash in respect of any Shortfall or Excess (“**Tax Adjustment**”).

4.9

If:

4.9.1 there is a Shortfall, the Buyer shall pay to the Seller an amount equal to that Shortfall;

4.9.2 there is an Excess, the Seller shall pay to the Buyer an amount equal to that Excess; and

4.9.3 there is neither a Shortfall, nor an Excess, no payment shall be made.

4.10

The Seller shall use reasonable endeavours to agree the amount of the Tax Adjustment within 15 Business Days of the date on which it is notified to the Seller in accordance with clause 4.8 and, if it agrees with the amount of the Tax Adjustment it shall give written notice to the Buyer of such agreement. If the Seller fails to notify the Buyer in writing that it agrees with the amount of the Tax Adjustment during that 15 Business Day period, then the Tax Adjustment shall be deemed to have been agreed. If the Seller does not agree with the amount of the Adjustment it may give written notice to the Buyer of the points in dispute setting out in reasonable detail the reasons why those points are in dispute and its calculation of the Tax Adjustment (a “**Tax Notice**”).

- 4.11 If the Seller gives a Tax Notice to the Buyer within the period of 15 Business Days specified in clause 4.10, the Buyer and the Seller shall attempt in good faith to resolve any outstanding matters and agree the amount of the Tax Adjustment within 15 Business Days after the receipt by the Buyer of written notice from the Seller of the points in dispute. The amount of the Tax Adjustment so agreed by them shall be final and binding on the parties for all purposes. In the absence of agreement between the Buyer and the Seller within that time period, the matters in dispute shall be referred to the Independent Accountant and the Independent Accountant shall be instructed to determine the correct interpretation and application of the of the provisions of schedule 10 and/ or the amount of the Tax Adjustment (as the case may be) in accordance with the procedure set out in clause 9.
- 4.12 The Tax Adjustment shall become payable on the date falling five Business Days after the date on which it is agreed or determined in accordance with this Agreement.
- General**
- 4.13 Subject to clauses 7.1 to 7.9, the Buyer or Seller (as the case may be) shall satisfy its obligation under this clause 4 in cash by telegraphic transfer of immediately available funds to the bank account specified or referred to in clause 16 (Payments and Interest).
- 4.14 Each party shall promptly provide to the other or the other's accountants or professional advisers all such documents and information as may reasonably be requested for the purpose of agreeing each Adjustment. The parties' obligations under this clause shall, without limitation, extend to providing access to or copies of all working papers in their possession or under their control created in the course of determining the relevant Adjustment, subject to parties signing the appropriate hold harmless letter(s), as necessary.
- 4.15 Any Cash Adjustment, Debt Adjustment, Bonus Adjustment and Tax Adjustment shall so far as possible and to the extent permitted by law be treated as a reduction or (as the case may be) an increase to the purchase price payable for the Shares by an equivalent amount.
- 5. CONTINGENT CONSIDERATION**
- 5.1 The Contingent Consideration (if any) in relation to the 2012 EBITDA Target shall be calculated as follows:
- 5.1.1 if the 2012 EBITDA is greater than or equal to the 2012 EBITDA Target, the Contingent Consideration in relation to 2012 EBITDA shall be 54.32% of the 2012 Initial EBITDA Amount plus an amount equal to 0.001% of the amount by which the 2012 EBITDA is greater than the 2012 EBITDA Target; or

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- 5.1.2 if the 2012 EBITDA is between 86.475% (inclusive) and 100% of the 2012 EBITDA Target, the Contingent Consideration in relation to 2012 EBITDA shall be $(54.32\% \text{ of the 2012 Initial EBITDA Amount}) \times (2012 \text{ EBITDA} \div 2012 \text{ EBITDA Target})$; or
- 5.1.3 if the 2012 EBITDA is less than 86.475% of the 2012 EBITDA Target, no Contingent Consideration shall be payable in relation to 2012 EBITDA.
- 5.2 The Contingent Consideration (if any) in relation to the 2013 EBITDA Target shall be calculated as follows:
- 5.2.1 if the 2013 EBITDA is greater than or equal to the 2013 EBITDA Target, the Contingent Consideration in relation to 2013 EBITDA shall be 48.76% of the 2013 Initial EBITDA Amount plus an amount equal to 0.001% of the amount by which the 2013 EBITDA is greater than the 2013 EBITDA Target; or
- 5.2.2 if the 2013 EBITDA is between 76.285% (inclusive) and 100% of the 2013 EBITDA Target, the Contingent Consideration in relation to 2013 EBITDA shall be $(48.76\% \text{ of the 2013 Initial EBITDA Amount}) \times (2013 \text{ EBITDA} \div 2013 \text{ EBITDA Target})$; or
- 5.2.3 if the 2013 EBITDA is less than 76.285% of the 2013 EBITDA Target, no Contingent Consideration shall be payable in relation to 2013 EBITDA.
- 5.3 Subject to clauses 7.1 to 7.7 the Contingent Consideration in relation to the 2012 EBITDA Target shall become payable on the date falling 10 days after:
- 5.3.1 the date that the Seller gives notice in writing to the Buyer that it agrees the draft EBITDA Statement in respect of the 2012 EBITDA or such statement is deemed to have been agreed, in either case pursuant to clause 6.4; or
- 5.3.2 if the Seller gives an EBITDA Notice in relation to such draft EBITDA Statement, the date that such EBITDA Statement is agreed by the Seller and the Buyer or delivered by the Independent Accountant, in either case pursuant to clause 6.5.
- 5.4 Subject to clauses 7.1 to 7.7 the Contingent Consideration in relation to the 2013 EBITDA Target shall become payable on the date falling 10 days after:
- 5.4.1 the date that the Seller gives notice in writing to the Buyer that it agrees the draft EBITDA Statement in respect of the 2013 EBITDA or such statement is deemed to have been agreed, in either case pursuant to clause 6.4; or
- 5.4.2 if the Seller gives an EBITDA Notice in relation to such draft EBITDA Statement, the date that such EBITDA Statement is agreed by the Seller and the Buyer or delivered by the Independent Accountant, in either case pursuant to clause 6.5.
- 5.5 Subject to clauses 7.1 to 7.7, the Buyer shall satisfy its obligation to pay the Contingent Consideration due to the Seller in cash by telegraphic transfer of immediately available funds to the bank account specified in clause 16 (Payments and Interest). The Buyer

shall satisfy its obligation to pay the Contingent Consideration due to the Flowering Shareholders by the issue of the 2012 Earn-out Loan Notes and the 2013 Earn-out Loan Notes as appropriate.

- 5.6 In the event that the 2012 EBITDA is greater than the 2012 EBITDA Target:
- 5.6.1 the Buyer shall execute the Series D 2012 Loan Note Instrument in a principal amount equal to the amount of the Contingent Consideration in excess of the sum of 54.32% of the 2012 Initial EBITDA Amount that is payable to the Flowering Shareholders; and
 - 5.6.2 issue Series D 2012 Loan Notes to the Flowering Shareholders in the proportions specified in schedule 9.
- 5.7 In the event that the 2013 EBITDA is greater than the 2013 EBITDA Target:
- 5.7.1 the Buyer shall execute the Series D 2013 Loan Note Instrument in a principal amount equal to the amount of the Contingent Consideration in excess of the sum of 48.76% of the 2013 Initial EBITDA Amount that is payable to the Flowering Shareholders; and
 - 5.7.2 issue Series D 2013 Loan Notes to the Flowering Shareholders in the proportions specified in schedule 9.
6. **PREPARATION OF EBITDA STATEMENT**
- 6.1 The Buyer undertakes to inform the Seller as soon as reasonably practicable of any event or circumstance that will or might reasonably be expected to give rise to an adjustment to the 2012 EBITDA Target or the 2013 EBITDA Target.
- 6.2 The parties agree that, notwithstanding any other provision of this Agreement, Sukhpal Singh Ahluwalia shall be entitled to disclose such information to the Seller as he, in his absolute discretion, considers relevant to the Contingent Consideration.
- 6.3 The Buyer shall procure that the Year 2012 Accounts and Year 2013 Accounts are drawn up as soon as reasonably practicable and delivered to the Seller together with a draft EBITDA Statement for that financial year within six Business Days of the sooner of:
- 6.3.1 in the case of the Year 2012 Accounts, (i) the date on which such accounts are agreed on behalf of the directors and auditors of ECPH and (ii) 1 April 2013;
 - 6.3.2 in the case of the Year 2013 Accounts, (i) the date on which such accounts are agreed on behalf of the directors and auditors of ECPH and (ii) 1 April 2014.
- 6.4 The Seller shall use reasonable endeavours to agree the EBITDA Statement within 20 Business Days of the date on which it is delivered to the Seller in accordance with this clause 6 and shall give written notice to the Buyer of such agreement. If the Seller fails to notify the Buyer in writing that it agrees with the draft EBITDA Statement and has not given an EBITDA Notice, then it shall be deemed to have been agreed. If the Seller does

not agree with the draft EBITDA Statement it may give written notice to the Buyer of the points in dispute setting out in reasonable detail the reasons why those points are in dispute and its calculation of the relevant EBITDA (an "EBITDA Notice").

- 6.5 If the Seller gives an EBITDA Notice within the period of 20 Business Days specified in clause 6.4, the Buyer and the Seller shall attempt in good faith to resolve any matters in dispute and agree the calculation of the EBITDA Statement within 20 Business Days after the receipt by the Buyer of the EBITDA Notice. The relevant EBITDA Statement so agreed by them shall be final and binding on the parties for all purposes. In the absence of agreement between the Buyer and the Seller within that time period, the matters in dispute including any dispute in relation to the interpretation or application of the provisions of schedule 7 shall be determined by the Independent Accountant in accordance with the procedure set out in clause 9. The Independent Accountant shall be instructed to deliver an EBITDA Statement for the relevant year. That revised EBITDA Statement shall then constitute the EBITDA Statement for that financial year for the purposes of this Agreement.
- 6.6 Each party shall promptly provide to the other or the other's accountants or professional advisers all such documents and information as may reasonably be requested for the purpose of preparing or reviewing each EBITDA Statement. The parties' obligations under this clause shall, without limitation, extend to providing access to or copies of all working papers in their possession or under their control created in the course of the preparation and/or review of the relevant EBITDA Statement.
7. **SET-OFF**
- 7.1 If the Buyer makes a Claim against the Seller, then, at the sole option of the Buyer and without prejudice to any other remedy available to it, the following provisions of this clause 7 shall apply.
- 7.2 If a Claim has been settled in favour of the Buyer but shall, as at the date on which any Adjustment or Contingent Consideration falls due for payment, remain unpaid by the Seller, the Buyer shall be entitled to set-off all or part of the amount of the Claim against such Adjustment and/or Contingent Consideration payable to the Seller.
- 7.3 A Claim shall be regarded as settled for the purposes of this clause 7 if either:
- 7.3.1 the Seller and the Buyer shall so agree in writing; or
- 7.3.2 a court of competent jurisdiction has awarded an unappealable judgment in respect of the Claim.
- 7.4 If a Claim has not been settled as at the date on which any Adjustment or Contingent Consideration falls due for payment (an "Outstanding Claim"), then the Buyer shall be entitled to withhold from the Adjustment and/or the Contingent Consideration an amount up to its good faith estimate of the amount for which the Seller is likely to be liable pursuant to the Outstanding Claim (the "Retained Amount") provided that the Buyer shall transfer the Retained Amount into the Set-Off Escrow Account as soon as reasonably practicable after such account is opened by the Seller's Solicitors.

- 7.5 Where a Retained Amount is held in the Set-Off Escrow Account in respect of an Outstanding Claim, the following provisions shall apply upon the Outstanding Claim being settled:
- 7.5.1 where the Outstanding Claim is settled in favour of the Buyer, the amount due in respect of the claim shall be released to the Buyer together with any interest accrued on such amount in the Set-Off Escrow Account (less any amounts that are to be deducted in accordance with the terms of the Set-Off Escrow Account Instruction Letter) and shall be set off by the Buyer against the Contingent Consideration and, if the Retained Amount exceeds the amount at which the claim is settled, the excess shall be paid to the Seller from the Set-Off Escrow Account together with any interest accrued on such sum in the Set-Off Escrow Account; and
- 7.5.2 where the Outstanding Claim is settled in favour of the Seller, the Retained Amount shall be paid to the Seller from the Set-Off Escrow Account together with any interest accrued on such sum in the Set-Off Escrow Account (less any amounts that are to be deducted in accordance with the terms of the Set-Off Escrow Account Instruction Letter), unless, following any such payment, the amount remaining in the Set-Off Escrow Account would be less than the total amount of all Outstanding Claims in which case the amount payable under this clause 7.5.2 shall be the amount (if any) by which the amount remaining in the Set-Off Escrow Account exceeds the total amount of all Outstanding Claims.
- 7.6 The set-off by the Buyer of any amount due in respect of any Claim against an Adjustment and/or the Contingent Consideration shall not restrict the rights of the Buyer to recover any further sum due to it in respect of that or any other Claim not satisfied by such set-off.
- 7.7 Any set-off shall so far as is possible be treated as a reduction to the consideration paid for the Shares.
- 7.8 If any amount is required to be paid into the Set-Off Escrow Account pursuant to this clause, each of the Seller and the Buyer shall instruct the Seller's Solicitors to open an account in accordance with the Set-Off Escrow Account Instruction Letter and will provide a list of authorised signatories and specimen signatures to the Seller's Solicitors with that instruction. Each of the Seller and the Buyer undertakes not to revoke any instructions contained in the Set-Off Escrow Account Instruction Letter.
- 7.9 The Buyer shall also be entitled to set-off amounts due under the Series A Loan Notes (and cancel such notes) and withhold sums payable in respect of such notes all in accordance with the terms of the Series A Loan Note Instruments.

- 7.10 If through the operation of this clause 7 or pursuant to the Series A Loan Note Instruments amounts are set-off in respect of Claims such that the order of priority set out in paragraph 2.4 of schedule 5 is not applied, the Buyer shall seek to recover under the Insurance Policy any amounts that would otherwise have been recoverable under the Insurance Policy and, upon receipt of any amounts so recovered, shall reimburse the Seller for such amounts.
8. **EARN-OUT PERIODS**
During the Earn-out Periods the provisions of schedule 6 (The Earn-out Periods) shall apply.
9. **INDEPENDENT ACCOUNTANT**
Any matters which this Agreement provides are to be determined by the Independent Accountant shall be referred for determination by either the Seller or the Buyer to:
- 9.1.1 an independent firm of chartered accountants, being one of Ernst & Young, PwC and KPMG, agreed between the Seller and the Buyer; or
- 9.1.2 if no such firm is agreed on or before the date falling five Business Days after the date on which a firm is first proposed by either party to the other for the purpose, such independent firm of chartered accountants as shall be chosen on the application of either party by the President for the time being of the Institute of Chartered Accountants in England and Wales.
- 9.2 The Independent Accountant:
- 9.2.1 shall act as expert and not as arbitrator;
- 9.2.2 shall decide on the procedure to be followed in the determination (provided that, in any event, it shall give the Seller and the Buyer the opportunity of making such written representations as they may reasonably require);
- 9.2.3 in relation to the EBITDA Statement, shall be instructed to determine the points in dispute in accordance with the accounting principles, practices and policies set out in schedule 7;
- 9.2.4 in relation to a matter that relates to the Completion Financial Statements, shall be instructed to determine the points in dispute in accordance with the accounting principles, practices and policies set out in schedule 10; and
- 9.2.5 shall be required only to determine those matters that this Agreement provides should be determined by it and not any additional or separate issues subsequently raised by the parties) and be requested to deliver such determination and any calculation, statement or account required to be provided by it by this Agreement in writing to the parties on or before the date falling 20 Business Days after the submission of final written representations by the parties.

- 9.3 In the absence of fraud or manifest error, the decision of the Independent Accountant and any calculation, statement or accounts required to be provided by it by this Agreement shall be final and binding on the parties for all purposes. The costs of the Independent Accountant shall be paid by such party or parties as the Independent Accountant shall determine in its sole discretion, having regard to the relative merits of the arguments of each of the parties. In default of a determination by the Independent Accountant on costs they shall be borne as to 50% by the Buyer and 50% by the Seller.
- 9.4 The Seller and the Buyer shall each use all reasonable endeavours to co-operate with the Independent Accountant and to enable it to reach its determination including by co-operating with any procedure set by the Independent Accountant. In particular, the Seller and Buyer shall each provide each other and the Independent Accountant with or with access to all such documents and information as may be requested by the Independent Accountant in its absolute discretion. In the event that either the Seller or the Buyer does not co-operate with or grant access to or supply any document or information requested within any time specified by the Independent Accountant, the Independent Accountant shall in its absolute discretion, be entitled to make such assumptions for the purposes of making its determination as a result of such failure to grant access or supply information as the Independent Accountant shall in its absolute discretion determine.
10. **COMPLETION**
- 10.1 Completion shall take place at the offices of the Seller's Solicitors immediately after this agreement is signed provided it shall not take place unless the Flowering Shareholders SPAs are completed at the same time.
- 10.2 At Completion, the Seller shall deliver or (in the case of the documents set out in clauses 10.2.13, 10.2.15, 10.2.17, 10.2.18 and 10.2.25) make available to the Buyer:
- 10.2.1 a transfer of the Shares in favour of the Buyer or its nominee, duly executed by the Seller;
 - 10.2.2 the share certificate representing the Shares in the name of the Seller;
 - 10.2.3 share certificates representing all of the issued shares held by any Group Company in each Subsidiary (being all of the issued shares in each Subsidiary other than ADS and VDS);
 - 10.2.4 each of the Flowering Shareholders SPAs duly executed by the relevant Flowering Shareholder;
 - 10.2.5 a letter in the agreed form from Paul Creasey executed as a deed resigning as a director and secretary of Euro Garage Solutions Limited and Euro Car Parts (Northern Ireland) Limited and secretary of ECP and acknowledging that he has no claim against any Group Company for compensation for loss of office or otherwise howsoever and waiving such claim as may exist;

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- 10.2.6 a letter in the agreed form from David Beak executed as a deed resigning as a director and secretary of each of Car Parts 4 Less Limited and Seebeck 31 Limited and acknowledging that he has no claim against any Group Company for compensation for loss of office or otherwise howsoever and waiving such claim as may exist;
- 10.2.7 a letter in the agreed form from Maheshkumar Shah executed as a deed resigning as secretary of the Company and acknowledging that he has no claim against any Group Company for compensation for loss of office or otherwise howsoever and waiving such claim as may exist;
- 10.2.8 the Compromise Agreement duly executed by the parties thereto together with a copy of the signed certificate thereto executed on behalf of the relevant firm of solicitors, incorporating a letter resigning as a director of the Company and acknowledging that she has no claim against any Group Company for compensation for loss of office or otherwise howsoever and waiving such claim as may exist;
- 10.2.9 a certified copy of a letter of resignation in the agreed form from the auditors of each Group Company resigning their office with effect from Completion (without any claim for compensation for loss of office or otherwise) and confirming that there are no circumstances of the kind referred to in section 519 of the Companies Act 2006;
- 10.2.10 a deed of waiver of claims against Group Companies in the agreed form duly executed by the Seller;
- 10.2.11 a power of attorney in favour of the Buyer in the agreed form executed by the Seller as a deed to enable the Buyer to exercise all voting and other rights attracting to the Shares pending registration of the Buyer as the holder of the Shares;
- 10.2.12 the seal (if any), statutory registers, certificate of incorporation (and any certificate of incorporation on change of name), minute books and share certificate books of each Group Company written up to date (but not including Completion);
- 10.2.13 the title deeds and other documents in respect of each Property as listed in document D1 of the Disclosure Bundle;
- 10.2.14 evidence satisfactory to the Buyer of the release of:
- (i) all Group Companies from all guarantees, indemnities or similar obligations given or undertaken by any of them in respect of the obligations of any person other than any Group Company; and
 - (ii) all Restricted Encumbrances over any of the assets of the Group Companies being redeemed, discharged and released except for those set out in schedule 1 and the letter of set off from ECP to Barclays Bank plc dated 23 December 2008;

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- 10.2.15 a copy of each bank mandate of each Group Company;
- 10.2.16 statement of the balances standing to the credit/debit of all bank accounts of each Group Company as at the close of business on the day falling two Business Days preceding Completion;
- 10.2.17 to the extent not held by the relevant Group Company all deposit books and all cheque books containing unused cheques relating to all bank accounts of the each Group Company;
- 10.2.18 all credit and charge cards held by each present director and secretary of each Group Company or by the Seller for the account of each Group Company;
- 10.2.19 the Employment Agreements duly executed by all parties to them other than the Buyer;
- 10.2.20 the Appointment Letter duly signed by ECP and David Bevan;
- 10.2.21 the Appointment Variation executed by ECP and Neil Brown;
- 10.2.22 the signed minutes of the meetings held pursuant to clause 10.3;
- 10.2.23 where this Agreement or any document to be delivered to the Buyer pursuant to this clause 10.2 is executed under power of attorney, a copy of the power of attorney certified as a true copy;
- 10.2.24 where this Agreement or any document to be delivered to the Buyer pursuant to this Agreement is executed on behalf of a company, a copy of the resolution of the board of directors of the company conferring the authority certified by a director or the secretary of the company,
- 10.2.25 all the papers, books, records (in whatever medium) and all other assets of the Group Companies which are within the possession or under the control of the Seller, the directors of any Group Company, or any Connected Persons of the Seller or such directors;
- 10.2.26 the Set-Off Escrow Account Instruction Letter signed on behalf of the Seller and the Seller's Solicitors; and
- 10.2.27 the Wembley Rent Review Memoranda, the Wembley Option Agreement and the Wembley Deed executed on behalf of the parties thereto.
- 10.3 The Seller shall procure that a board meeting or board meetings of the Company and where necessary, each other Group Company is/are held at or prior to Completion at which:

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- 10.3.1 each of Joseph M. Holsten, Robert L. Wagman and John S. Quinn is appointed as a director of the Company with effect from Completion;
 - 10.3.2 each of Joseph M. Holsten, Robert L. Wagman and John S. Quinn is appointed as a director of ECP with effect from Completion;
 - 10.3.3 each of Sukhpal Singh Ahluwalia, Joseph M. Holsten, Robert L. Wagman and John S. Quinn is appointed as a director of each of Euro Garage Solutions Limited, Car Parts 4 Less Limited and Seebeck 31 Limited, in each case with effect from Completion;
 - 10.3.4 Gravitas Company Secretarial Services Limited is appointed as company secretary of each of the Company, ECP, Euro Garage Solutions Limited, Euro Car Parts (Northern Ireland) Limited (Co. no. 3550844), Car Parts 4 Less Limited and Seebeck 31 Limited, in each case with effect from Completion;
 - 10.3.5 each of Joseph M. Holsten, Robert L. Wagman and John S. Quinn is appointed as a director of Euro Car Parts (Northern Ireland) Limited with effect from Completion;
 - 10.3.6 the resignations referred to in clauses 10.2.5 to 10.2.9 are accepted with effect from Completion;
 - 10.3.7 Deloitte LLP is appointed auditor of the relevant Group Company with effect from Completion;
 - 10.3.8 the registered office of the relevant Group Company is changed to c/o K&L Gates LLP One New Change EC4M 9AF with effect from Completion;
 - 10.3.9 the transfer referred to in clause 10.2.1 is (subject only to Completion and it being duly stamped) approved for registration and the issue of a share certificate to the Buyer is approved; and
 - 10.3.10 the Company's execution of the Employment Agreements is approved.
- 10.4 At Completion, the Buyer shall:
- 10.4.1 pay the sums set out in clause 3.3 to the Seller;
 - 10.4.2 deliver to the Seller:
 - 10.4.2.1 a duly executed certificate representing £9,158,000 in nominal amount of Series A Loan Notes; and
 - 10.4.2.2 certified copies of the executed Loan Note Instruments (other than the Series D 2012 Loan Note Instrument and the Series D 2013 Loan Note Instrument);
 - 10.4.2.3 the Deed of Guarantee; and
 - 10.4.2.4 the Set-Off Escrow Account Instruction Letter signed on behalf of the Buyer.

- 10.5 Upon Completion, the Buyer shall procure that the Company shall pay £102,147,666.54 in cash to the Seller to settle the Draco Loan and the Seller hereby confirms that such payment is accepted in full and final settlement of all amounts due in respect of the Draco Loan.
- 10.6 The Buyer shall not be obliged to complete the purchase of any of the Shares unless the purchase of all the Shares is completed at the same time in accordance with this Agreement and the Flowering Shareholders SPAs;
- 10.7 On and with effect from Completion the Buyer will take out the Insurance Policy with an insurance cover limit of £25,000,000 above the Insurance Excess and shall produce evidence reasonably satisfactory to the Seller of the Insurance Policy having been put in place.
- 10.8 The Buyer will ensure that the Insurance Policy contains a provision under which the insurers waive any rights of subrogation that they may otherwise have had to claim against the Seller save in the case of the Seller's fraud or intentional misrepresentation.
11. **INTELLECTUAL PROPERTY**
- 11.1 In this clause 11, " **Intellectual Property** " shall have the meaning given in part 9 (Intellectual Property) of schedule 2 (Warranties).
- 11.1.1 Without prejudice to part 9 (Intellectual Property) of schedule 2 (Warranties), if the Seller or a member of the Seller's Group owns after Completion any Intellectual Property which in the year prior to Completion related exclusively or predominately to the business of any Group Company or to the business of the Group Companies, the Seller shall procure that such Intellectual Property is transferred to the Buyer or a company nominated by the Buyer for nominal consideration as soon as practicable after becoming aware of the ownership of such rights.
- 11.1.2 Without prejudice to part 9 (Intellectual Property) of schedule 2 (Warranties), the Seller hereby grants, and shall procure the grant by each relevant member of the Seller's Group, (with effect from Completion) to the Buyer a non-exclusive, perpetual, worldwide, assignable, royalty-free licence (with the right to sub-licence) of all Intellectual Property owned by the Seller or a member of the Seller's Group which relates (but not exclusively or predominately) to the business of a Group Company or to the business of the Group Companies.
- 11.1.3 The Seller shall procure that all licences of any Intellectual Property owned by any Group Company (or to be owned by the Buyer or its nominee pursuant to clause 11.1.1) granted to any member of the Seller's Group terminate at Completion.

12. **GUARANTEES AND INDEBTEDNESS**

12.1 The Guarantor unconditionally and irrevocably undertakes to the Seller:

- 12.1.1 to procure that the Buyer will fully and promptly perform and discharge all obligations and liabilities of the Buyer including any costs of enforcement of such obligations and liabilities (referred to in this clause as the “**Guaranteed Obligations**”) under or in respect of this Agreement;
- 12.1.2 that it guarantees as a continuing guarantee to the Seller the due and punctual performance and observance by the Buyer of the Guaranteed Obligations;
- 12.1.3 that, if the Buyer fails to do so, it will itself forthwith perform and discharge the Guaranteed Obligations as primary obligor and indemnify the Seller on demand against all Losses suffered or incurred by or made against the Seller in connection with or arising out of such failure; and
- 12.1.4 that if and each time the Buyer fails to make any payment to fulfil the Guaranteed Obligations when due, the Guarantor shall on demand (without first requiring the Seller to first take steps against the Buyer or any other person) pay such amount to the Buyer.

12.2 The liability of the Guarantor under this clause 12 shall not be limited, discharged or otherwise affected by the invalidity, unenforceability or frustration of any of the Guaranteed Obligations, by any lack of capacity or lack or misuse of authority on the part of the Buyer or its officers, by the liquidation, administration or dissolution of the Buyer or the disclaimer of any of the Guaranteed Obligations, by any variation or termination of any of the Guaranteed Obligations or by any other fact or circumstance which would or might (but for this provision) limit, discharge or otherwise affect the liability of the Guarantor. Further, the Guarantor hereby expressly waives, to the extent permitted by law, any defence to its obligations under this Agreement by reason of any other circumstance whatsoever (with or without notice to or knowledge of the Guarantor or any other guarantor) which may or might in any manner or to any extent vary the risks of the Guarantor or such other guarantor, or might otherwise constitute a legal or equitable defence available to, or discharge of, a surety or a guarantor, including without limitation any right to require or claim that resort be had to the Buyer or to any collateral in respect of the Guaranteed Obligations.

12.3 The Guarantor hereby waives to the fullest extent permitted by applicable law notice of the following events or occurrences: (i) acceptance of this Agreement; (ii) presentment, demand, default, non-payment, partial payment and protest under this Agreement; and (iii) any other event, condition, or occurrence described in clauses 12.1 to 12.4. The Guarantor agrees that the Seller may heretofore, now or at any time hereafter do any or all of the foregoing in such manner, upon such terms and at such times as the Seller, in its sole and absolute discretion, deems advisable, without in any way or respect impairing, affecting, reducing or releasing the Guarantor from its Guaranteed Obligations, and the Guarantor hereby consents to each and all of the foregoing events or occurrences.

- 12.4 The Guarantor hereby agrees that payment or performance by the Guarantor of its Guaranteed Obligations under this Agreement may be enforced upon demand by the Seller, such Guarantor expressly waiving to the fullest extent permitted by law any right it may have to require the Seller to (i) prosecute collection or seek to enforce or resort to any remedies against the Buyer or any other guarantor of the Guaranteed Obligations, or (ii) seek to enforce or resort to any remedies with respect to any security interests, or encumbrances granted to the Buyer or any remedies with respect to any other guarantor or any other person on account of the Guaranteed Obligations or any guaranty thereof.
- 12.5 The obligations of the Guarantor under clause 12.1 are continuing obligations and shall remain in full force and effect so long as any of the Guaranteed Obligations has yet to be fully performed or discharged.
- 12.6 The Buyer shall use reasonable endeavours to ensure that promptly after Completion the Seller is released from its obligations as surety under the Canterbury Documents and pending that release the Buyer shall indemnify the Seller on demand against all Losses incurred by the Seller arising on or after Completion from or in connection with its obligations as surety under the Canterbury Documents.
- 12.7 The Seller shall at all times after Completion indemnify the Buyer and each Group Company (and for this purpose the Buyer is acting as agent and trustee of each Group Company) and keep each of them fully indemnified against all Losses incurred by the Buyer or any Group Company under or in connection with:
- 12.7.1 any guarantee or security interest given by any Group Company on or before Completion in respect of the obligations of any other person (except another Group Company); and
- 12.7.2 any indemnity given by any Group Company on or before Completion in respect of the obligations of the Seller or any Connected Persons of the Seller (except another Group Company).
- 12.8 The Seller shall procure that at or before Completion each Group Company is released from any guarantees, security interests and indemnities given by it in favour of the Seller or any member of the Seller's Group or any Connected Person of the Seller.
- 12.9 The Seller shall procure that immediately following Completion there will be no amounts owing by any Group Company to the Seller or any member of the Sellers' Group or any Connected Person of the Seller, save for £104,000 outstanding under the quarterly invoice in respect of the Wembley Leases of which £52,000 is payable on 1 November 2011 and £52,000 is payable on 1 December 2011.
- 12.10 The Seller shall procure that at Completion all monies owing by the Seller and any Connected Person of the Seller to any Group Company are paid in full, whether or not then due for payment.

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13. **WARRANTIES AND INDEMNITIES**
- 13.1 The Seller warrants to the Buyer in the terms of the Warranties.
- 13.2 The Seller acknowledges that the Buyer is entering into this Agreement in reliance upon the Warranties.
- 13.3 Each of the Warranties shall be construed as a separate and independent warranty and, save as expressly otherwise provided in this Agreement, shall not be limited by reference to or inference from the terms of any other Warranty or any other provision of this Agreement.
- 13.4 The Warranties and the ADS/VDS Indemnity are given subject to those matters which are fairly disclosed in the Disclosure Letter. For the purposes of this Agreement, a matter is “fairly disclosed in the Disclosure Letter” if and only if:
- 13.4.1 it is deemed disclosed in the Disclosure Letter under the heading “General Disclosure”; or
- 13.4.2 details of the matter are included under the heading “Specific Disclosures” in the Disclosure Letter and in sufficient detail or referring to specific documents or sections in the Data Room sufficiently to enable the Buyer to identify and understand the nature and scope of the matter disclosed and to assess its likely impact.
- 13.5 The only Warranties given:
- 13.5.1 in respect of the Properties are those set out in part 6 of schedule 2 and the other Warranties shall be deemed not to be given in relation to the Properties; and
- 13.5.2 in respect of Taxation are the Tax Warranties, and the other Warranties shall be deemed not to be given in relation to Taxation.
- 13.6 Except in the case of fraud by any director or employee of any Group Company the Seller waives any rights, remedies or claims it may have in connection with any misrepresentation, inaccuracy, error in or omission from the Disclosure Letter against any Group Company, or any director, employee or agent of any Group Company on whom the Seller has relied, in connection with preparing the Disclosure Letter or in agreeing to any term of this Agreement.
- 13.7 The Disclosure Letter does not affect the construction of this Agreement (without prejudice to its qualification of the Warranties) and does not vary the terms of this Agreement (except if and in so far as the Disclosure Letter may expressly so state). Nothing in the Disclosure Letter shall exclude or limit any liability or obligation of the Seller except liability under clause 13.1.
- 13.8 Any obligation which the Buyer may have to mitigate any loss arising out of any breach of the Warranties or any other provision of this Agreement shall not extend to allowing any Group Company to become insolvent.

- 13.9 Schedule 5 shall apply to limit or exclude, in accordance with its terms, any liability which the Seller might otherwise have in respect of any Warranty Claim or, where stated, any Tax Claim. Part 4 of schedule 3 shall apply to limit or exclude, in accordance with its terms, any liability which the Seller might otherwise have in respect of any Tax Claim.
- 13.10 Any amount paid in respect of a Warranty Claim and/or a Tax Claim and/or an Indemnity Claim and/or an ADS/VDS Indemnity Claim shall so far as possible and to the extent permissible by law be treated as a reduction to the purchase price payable for the Shares by an equivalent amount.
- 13.11 Where any Warranty refers to the awareness, knowledge or belief of the Seller or any analogous expression, the awareness, knowledge or belief of the Seller shall be deemed to include the actual knowledge, having made reasonable enquiry, of:
- 13.11.1 Sukhpal Singh Ahluwalia (in respect of all of the Warranties);
 - 13.11.2 Maheshkumar Shah (in respect of all of the Warranties);
 - 13.11.3 Neil Brown (in respect of all of the Warranties other than those Warranties contained in part 6 of schedule 2);
 - 13.11.4 David Beak (in respect of all of the Warranties other than those Warranties contained in parts 9 and 10 of schedule 2);
 - 13.11.5 Stephen Horne (in respect of the Warranties contained in parts 3, 4 and 6 of schedule 2 only);
 - 13.11.6 Sukhbir Kapoor (in respect of the Warranties contained in parts 3 and 4 of schedule 2 only);
 - 13.11.7 Andrew Hamilton (in respect of all of the Warranties other than those Warranties contained in parts 9 and 10 of schedule 2);
 - 13.11.8 Chris Barella (in respect of the Warranties contained in parts 3 and 4 of schedule 2 only);
 - 13.11.9 Martin Gray (in respect of the Warranties contained in part 7 of schedule 2 only); and
 - 13.11.10 Michael Spalding (in respect of the Warranties contained in part 10 of schedule 2 only).
- 13.12 Each of the Buyer and the Guarantor severally warrants in respect of itself only that:
- 13.12.1 it has all necessary power and authority to enter into and perform its obligations under this Agreement and all agreements to be entered into by it pursuant to this Agreement;

- 13.12.2 this Agreement, and all agreements to be entered into by it under this Agreement, constitute (or will when executed constitute) binding and enforceable obligations on it in accordance with their respective terms;
- 13.12.3 the entering into and performance by it of its obligations under this Agreement and all agreements to be entered into by it under this Agreement:
- 13.12.3.1 will not result in a breach of any provision of its constitution;
- 13.12.3.2 will not result in a breach of, or constitute a default under, any agreement under which it enjoys rights or by which it is bound;
- 13.12.3.3 will not result in a breach of any order, judgment or decree of any court or governmental, administrative or regulatory body or agency to which it is party or by which it is bound; and
- 13.12.3.4 does not require the consent of any third party that has not been obtained;
- 13.12.4 it is able to pay its debts as they fall due and has not stopped or suspended payment of its debts;
- 13.12.5 the value of its assets exceeds the amount of its liabilities, taking into account contingent and prospective liabilities;
- 13.12.6 no Insolvency Proceedings have commenced in relation to it or (if applicable) any part of its assets or undertaking which have not been dismissed within 90 Business Days; and
- 13.12.7 there are no circumstances which entitle or may entitle any person to commence any Insolvency Proceedings in relation to it or (if applicable) any part of its assets or undertaking.
- 13.13 The Seller shall at all times after Completion indemnify the Buyer and each Group Company (and for this purpose the Buyer is acting as agent and trustee for each Group Company) and keep each of them fully indemnified on demand against all Losses (excluding any liability to Tax) suffered or incurred by the Buyer or any Group Company arising on or after Completion or prior to Completion that remain unsatisfied at Completion out of the 2009 Group Reorganisation, including each of the actions carried out in relation to the 2009 Group Reorganisation, save that any Losses that may be recovered under paragraph 1.1.6 of part 3 of schedule 3 shall be dealt with under that paragraph.
- 13.14 In recognition that the Seller does not wish to provide Warranties in respect of ADS and VDS as such companies are only 51% subsidiaries of the Company and are not actively managed by the Company, the parties have instead agreed that the Seller will provide an indemnity to the Buyer in the terms set out in clause 13.16.

- 13.15 Accordingly, notwithstanding any other provisions of this clause 13, the Warranties do not relate to ADS or VDS and for the purposes of clause 13.1, references in schedule 2 and part 2 of schedule 3 to "Group Company", "Group Companies", "Active Companies" and "Subsidiaries" shall be deemed to exclude ADS and VDS.
- 13.16 In relation to ADS and VDS the Seller shall indemnify the Buyer and keep it indemnified, subject only to clause 13.17, to the same measure and quantum (no more and no less) as if the Warranties given by the Seller related to ADS and VDS as if references in schedule 2 and part 2 of schedule 3, to "Group Company", "Group Companies", "Active Companies" and "Subsidiaries" included ADS and VDS.
- 13.17 In determining the measure and quantum of the indemnity provided for in clause 13.16:
- 13.17.1 all of the provisions of this Agreement relating to Warranties shall apply as if the ADS/VDS Indemnity Claim were a Warranty Claim (including, where applicable, a General Warranty Claim) or a claim under the Tax Warranties (as the case may be) and not a claim for indemnity:
- 13.17.1.1 including, without limitation, and for the avoidance of doubt all other provisions of this clause 13, the provisions of part 4 of schedule 3 in relation to Tax Warranties and the provisions of schedule 5;
- 13.17.1.2 but excluding paragraph 2.2 of schedule 5; and
- 13.17.1.3 but excluding clause 26.4 and paragraphs 1 and 7.3 of schedule 5, insofar as they would prevent limitation or exclusion of liability in the case of warranties or representations but not indemnities; and
- 13.17.1.4 the Buyer shall have the same duty to mitigate its loss as if the ADS/VDS Indemnity Claim were a Warranty Claim or a claim under the Tax Warranties (as the case may be) and not a claim for indemnity;
- 13.17.2 the Seller shall not be liable in respect of any ADS/VDS Indemnity Claims or ADS/VDS Tax Covenant Claims unless the Seller has an aggregate liability in respect of all ADS/VDS Indemnity Claims and ADS/VDS Tax Covenant Claims (excluding all claims for which the Seller has no liability by reason of paragraph 2.1 of schedule 5) in excess of £100,000 excluding any liability for costs and interest (in which event, the Seller shall be liable for the full amount (including, in addition, any liability for reasonable costs and interest) and not merely the excess over such amount).
- 13.18 Any ADS/VDS Indemnity Claim brought by the Buyer shall be for damages for breach of contract and shall not constitute an action for a debt.

- 13.19 The Seller shall at all times after Completion indemnify the Buyer and each Group Company (and for this purpose the Buyer is acting as agent and trustee for each Group Company) and keep each of them fully indemnified on demand against all Losses suffered or incurred by the Buyer or any Group Company on or after 27 September 2011 arising out of the winding-up petition filed on 9 September 2011 at Leeds District Registry on behalf of Platform Hire Ltd.
- 13.20 The Seller shall at all times after Completion indemnify the Buyer and each Group Company (and for this purpose the Buyer is acting as agent and trustee for each Group Company) and keep each of them fully indemnified on demand against all Losses suffered or incurred by the Buyer or any Group Company arising out of the UK Border Agency's visit to Wembley and Tamworth (each as defined in part 6 of schedule 2) on 29 September 2011 and the arrest of personnel (including agency workers) on that day.
- 13.21 The parties agree that:
- 13.21.1 a claim under clause 13.20 shall be deemed to be a "Claim" for the purposes of clause 7 and in connection therewith shall be deemed to be included in the definition of "Claim" as such term is used in the Loan Note Instruments but not for any other purpose under this Agreement; and
- 13.21.2 paragraphs 5 and 6.1 of schedule 5 (but not any other paragraphs of schedule 5) shall apply to a claim under clause 13.20.
14. **TAXATION**
The provisions of schedule 3 shall apply from the date of this Agreement.
15. **LOAN NOTE INSTRUMENTS AND FLOWERING SHAREHOLDERS SPAS**
The Buyer undertakes to the Seller that it shall not make any variation of any provision of the Loan Note Instruments or Flowering Shareholders SPAs (including any acceleration of any payment under any Loan Note Instrument or the Flowering Shareholders SPAs) without the prior written consent of the Seller.
16. **PAYMENTS AND INTEREST**
- 16.1 Subject to clause 16.3, payments to be made to the Seller under this Agreement (other than through the issue of Loan Notes, in relation to which payment shall be as provided in the relevant Loan Note Instrument) shall be made in pounds sterling by telegraphic transfer of immediately available funds to such account as is notified in writing to the Buyer from time to time on at least three Business Days' notice.
- 16.2 Subject to clause 16.3, payments to be made to the Buyer under this Agreement shall be made in pounds sterling by telegraphic transfer of immediately available funds to such account as is notified in writing from time to time to the Seller at least three Business Days' notice.
- 16.3 Payment of any sum to a party's solicitors will discharge the obligations of the relevant party to pay the sum in question, and that party shall not be concerned to see the application of the monies so paid.

- 16.4 Interest shall accrue on any amount not paid on the due date for payment pursuant to this Agreement at the rate of 2% above the base rate for the time being of Barclays Bank plc.
- 16.5 Each payment to be made by the Seller under this Agreement shall be made free and clear of all deductions, withholdings, counterclaims or set-off of any kind except for those required by law.
- 16.6 In the event that:
- 16.6.1 any deduction or withholding is required by law to be made from any sum payable by the Seller to the Buyer under this Agreement, the Seller shall be obliged to pay such increased sum as will, after the deduction or withholding has been made, leave the Buyer with the same amount as it would have been entitled to receive in the absence of such requirement to make a deduction or withholding; and
- 16.6.2 any sum paid or payable to the Buyer under this Agreement (the “ **original sum** ”) is or will be chargeable to Tax, the Seller shall be obliged to pay such sum as will ensure that, after payment of the Tax, there shall be left an amount equal to the original sum and for these purposes a sum shall be regarded as chargeable to Tax in circumstances where it would have been chargeable to Tax but for some Relief available to the Buyer;
- 16.6.3 the Seller makes an increased payment pursuant to paragraph 16.6.1 or 16.6.2 in respect of which the Buyer receives a repayment of Tax or is granted any credit against or relief for any Tax payable by it that it would not otherwise have received or been granted, the Buyer shall reimburse the Seller such amount as will leave the Buyer in no worse position than it would have been had there been no such deduction or withholding. The Buyer shall promptly notify the Seller of such credit, relief or repayment when received or granted (as applicable) and such reimbursement will be made no later than five Business Days after the Buyer receives or is granted such credit, relief or repayment (as applicable).
- 16.7 In the event that any deduction or withholding is required by any United States legislation to be made from any sum payable by the Buyer or the Guarantor to the Seller under this Agreement, the Buyer shall be obliged to pay such increased sum as will, after the deduction or withholding has been made, leave the Seller with the same amount as it would have been entitled to receive in the absence of such requirement to make a deduction or withholding.
17. **BOOKS AND RECORDS**
- 17.1 The Buyer shall ensure that all records (whether in electronic or in any other form) of the Buyer relating to the business of any Group Company which are or are likely to be relevant in connection with any Warranty Claim or other claim against the Seller under this Agreement are retained for so long as any actual or threatened Warranty Claim or other claim remains outstanding.

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- 17.2 The Seller shall not use or disclose any Business Information and shall use its best endeavours to ensure that none of its Connected Persons shall do so.
- 17.3 Clause 17.2 does not apply:
- 17.3.1 to the disclosure of any Business Information which has entered the public domain otherwise than by reason of a breach of any obligation of the Seller;
- 17.3.2 to the disclosure of Business Information to a director, officer or employee of the Buyer or any Group Company whose function requires him to have the Business Information; or
- 17.3.3 to the disclosure of Business Information required to be disclosed by law.
- 17.4 The Seller agrees that:
- 17.4.1 all records (whether in electronic or in any other form) of the Seller relating to the business of any Group Company which are or are likely to be relevant in connection with any Warranty Claim or other claim against the Seller under this Agreement or any claims against the Buyer or any Group Company by any third party are retained for so long as any actual or threatened Warranty Claim or other claim remains outstanding; and
- 17.4.2 without limitation to the foregoing, it will at any time and from time to time after Completion give or disclose to the Buyer on the Buyer's request all Business Information which is within its possession or knowledge.
18. **ASSIGNMENT**
- 18.1 Except as provided in clauses 18.2 and 18.3, no party and no third party referred to in clauses 22.1 or 22.2 may assign or otherwise dispose of any rights under this Agreement, at law or in equity, including by way of security or declaration of trust. Any purported assignment in breach of this clause shall be void and confer no rights on the purported assignee.
- 18.2 The benefit of, or any right or interest in or under or arising from this Agreement may be assigned by the Buyer at any time to any member of the Buyer's Group save that any assignment so permitted shall provide that, immediately prior to the assignee ceasing to be a member of the Buyer's Group, the assignee shall re-assign the benefit, or any right or interest assigned, to the Buyer or another member of the Buyer's Group and provided that the liability of the Seller to any assignee shall not be greater than its liability to the Buyer if that assignment had not occurred.
- 18.3 The benefit of, or any right of interest in or under or arising from, this Agreement may be assigned by the Seller at any time to its shareholders and/or to beneficiaries of its shareholders.

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19. **ANNOUNCEMENTS AND CONFIDENTIALITY**
- 19.1 No party may make any press release or other public announcement about this Agreement or the transactions contemplated by it or disclose any of the terms of this Agreement except with the consent of the other party.
- 19.2 Clause 19.1 shall not apply to:
- 19.2.1 any disclosure made by a party to a member of its Group or to its professional advisers;
- 19.2.2 any disclosure made by the Seller to the Flowering Shareholders or by the Seller to its shareholders and/or beneficiaries of its shareholders;
- 19.2.3 any announcement or disclosure required by the laws of any relevant jurisdiction or by any competent regulatory or governmental body or securities exchange in any relevant jurisdiction, provided that the party required to make such an announcement or disclosure shall to the extent practicable first notify the other parties and shall take into account their reasonable comments save that once the Buyer or the Guarantor has undertaken such notification and taken account of such comments on one occasion, it shall be entitled to include in any other announcement or disclosure required by law or any competent regulatory or governmental body wording in the same or substantially similar form to that included in the first such announcement or disclosure without any further notification being required.
- 19.3 Each party shall ensure that any member of its Group or professional adviser (and, in the case of the Seller, each of its Connected Persons) to which it discloses information under clause 19.2 is made aware of the obligations of confidentiality contained in this clause and complies with this clause as if binding on it directly.
- 19.4 The restrictions contained in this clause 19 shall apply without limit in point of time.
20. **COSTS**
- Each party shall bear its own costs and expenses in connection with the preparation, negotiation, execution and performance of this Agreement and the documents referred to in it
21. **NOTICES**
- 21.1 Any notice, consent or other communication given under this Agreement shall be in writing and in English, and signed by or on behalf of the party giving it, and shall be delivered by hand or sent by prepaid recorded or special delivery post (or recognised international courier if sent internationally) as follows (and, for the avoidance of doubt, may not be given by email):

to the Buyer:

For the attention of: General Counsel

Address: LKQ Corporation, 500 West Madison Street, Suite 2800, Chicago, IL 60661 USA

with a copy (which shall not constitute notice) to Jeremy Davis at K&L Gates LLP, One New Change, London EC4M 9AF;

to the Seller:

For the attention of: The Directors, Draco Limited

Address: No. 2, The Forum, Grenville Street, Jersey JE1 4HH

with a copy (which shall not constitute notice) to Fabrizio Carpanini at Olswang, 90 High Holborn, London WC1V 6XX

to the Guarantor:

For the attention of: General Counsel

Address: LKQ Corporation, 500 West Madison Street, Suite 2800, Chicago, IL 60661 USA

with a copy (which shall not constitute notice) to Jeremy Davis at K&L Gates LLP, One New Change, London EC4M 9AF.

21.2 A notice delivered or sent in accordance with clause 21.1 shall be deemed to have been given:

21.2.1 if delivered by hand, on the date of delivery;

21.2.2 if sent by prepaid recorded or special delivery post within the same country, on the second Business Day after the date of posting; and

21.2.3 if sent by recognised international courier, on the third Business Day after the date of posting.

21.3 In proving the giving of a notice, it will be sufficient to show:

21.3.1 in the case of a notice delivered by hand, that delivery was made; or

21.3.2 in the case of a notice sent by prepaid recorded or special delivery post, that the envelope containing the notice was properly addressed and posted in accordance with clause 21.1; or

21.3.3 in the case of recognised international courier, that the envelope containing the notice was delivered to the courier and receipt given.

- 21.4 Any party may from time to time notify the others of any other person or address for the receipt of notices or copy notices. Any such change shall take effect five Business Days after notice of the change is received or (if later) on the date (if any) specified in the notice as the date on which the change is to take place.
- 21.5 Any notice, consent or other communication given in accordance with clause 21.1 and received after 5.30 p.m. (local time) on a Business Day, or on any day which is not a Business Day, shall for the purposes of this Agreement be regarded as received on the next Business Day.
- 21.6 The provisions of clause 21.1 shall not apply in relation to the service of process in any legal proceedings arising out of or in connection with this Agreement.
22. **THIRD PARTY RIGHTS**
- 22.1 Members of the Seller's Group may rely upon and enforce the terms of clause 12.6 (guarantees and indebtedness) and the directors and employees of each Group Company may rely upon and enforce the terms of clause 12.6 (guarantees and indebtedness) and clause 13.6 (waiver of rights in relation to Warranties) and Sukhpal Singh Ahluwalia may rely on and enforce the terms of clause 6.2.
- 22.2 Notwithstanding any other provision of this clause 22, the parties may by agreement in writing rescind or vary any of the provisions of this Agreement without the consent of any third party, and accordingly section 2(1) of the Contracts (Rights of Third Parties) Act 1999 shall not apply.
- 22.3 Except as otherwise stated in this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause shall not affect any right or remedy of a third party which exists or is available apart from that act.
23. **FURTHER ASSURANCE**
- At or after Completion, the Seller shall execute all such documents and do or cause to be done all such other things as the Buyer may from time to time reasonably require in order to vest in the Buyer legal title to and the benefit of the Draco Shares.
24. **NO MERGER**
- Any provision of this Agreement which has not been fully performed at or before Completion shall, so far as it is capable of having effect and being performed after Completion shall remain in full force and effect notwithstanding Completion.
25. **COUNTERPARTS**
- This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument and shall not be effective until each of the parties has executed at least one counterpart.

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26. **ENTIRE AGREEMENT**
- 26.1 This Agreement and the documents referred to in it together constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of this Agreement including for the avoidance of doubt (a) the letter of intent from the Buyer to the Seller dated 18 July 2011 and (b) the confidentiality agreement from the Buyer to the Seller dated 16 March 2011.
- 26.2 The Buyer acknowledges that no provisions are to be regarded as implied into this Agreement, save for those implied by law and which are not lawfully capable of being excluded. All implied provisions lawfully capable of being excluded are excluded for all purposes.
- 26.3 In entering into this Agreement, and subject to schedule 5, each party accepts that it is not relying on any representation, warranty or on any other information or statement of opinion or belief, including, without limitation, replies to due diligence enquiries, whether written or oral, express or implied, and whether made or given by the Seller or by any of its advisers, which is not expressly comprised within or the subject of any of the Warranties.
- 26.4 Notwithstanding clause 13.9, nothing in this Agreement shall limit or exclude any liability of the Seller for fraud or intentional misrepresentation.
27. **WAIVER**
- 27.1 No waiver of any breach of or default under this Agreement shall be effective unless such waiver is in writing and has been signed by the party against which it is asserted.
- 27.2 No failure or delay by any party in exercising any right, power or remedy provided by law or under this Agreement shall affect that right, power or remedy or operate as a waiver thereof.
- 27.3 The single or partial exercise by any party of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise of that right, power or remedy or the exercise of any other right, power or remedy.
- 27.4 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.
28. **GOVERNING LAW, JURISDICTION AND SERVICE OF PROCEEDINGS**
- 28.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales over any claim, dispute or matter arising under or in connection with this Agreement.
- 28.2 Each party irrevocably waives any objection which it may have now or later to proceedings being brought in the courts of England and Wales and any claim that proceedings have been brought in an inconvenient forum. Each party further irrevocably

agrees that a judgment in any proceedings brought in the courts of England and Wales shall be conclusive and binding upon each party and may be enforced in the courts of any other jurisdiction.

- 28.3 The Guarantor appoints K&L Gates LLP of One New Change London EC4M 9AF (or such other person being a firm of solicitors in England as it may from time to time substitute) as its agent to receive on its behalf in England service of any proceedings arising out of or in connection with this Agreement. Such service shall be deemed completed on delivery to that agent (whether or not it is forwarded to and received by K&L Gates LLP or such substitute). If for any reason that agent ceases to be able to act as agent or no longer has an address in England, the Guarantor shall immediately appoint a substitute. In the event of the appointment of a substitute agent, the Guarantor shall give notice to the Seller of the new agent's name and address.
- 28.4 The Seller appoints Olswang LLP of 90 High Holborn, London WC1V 6XX (or such other person being a firm of solicitors in England as it may from time to time substitute) as its agent to receive on its behalf in England service of any proceedings arising out of or in connection with this Agreement. Such service shall be deemed completed on delivery to that agent (whether or not it is forwarded to and received by Olswang LLP or such substitute). If for any reason that agent ceases to be able to act as agent or no longer has an address in England, the Seller shall immediately appoint a substitute. In the event of the appointment of a substitute agent, the Seller shall give notice to the Buyer and the Guarantor of the new agent's name and address.
- 28.5 Nothing in this Agreement shall affect the right to serve process in any manner permitted by law.

THIS AGREEMENT has been executed by or on behalf of the parties on the date at the top of page 1.

SCHEDULE 1

Part 1: Details of the Company

Date and place of incorporation: Incorporated in England and Wales on 2 November 2009
Registered number: 7063752
Registered office: 1 London Street, Reading, Berkshire, RG1 4QW
Issued share capital: 2 ordinary shares of £1 each
211,714 ordinary A shares of £1 each
389,594 ordinary B shares of £1 each
Options/warrants: none
Directors: Sukhpal Singh Ahluwalia
Neil Brown
Maheshkumar Shah
Maheshkumar Shah

Secretary:

Shareholders:

Shareholder	Number and class of shares held
Draco Limited	2 ordinary shares
Neil Graeme Brown	111,429 ordinary A shares
Minerva Trust Company Limited as trustee of MBNK Trust	100,285 ordinary A shares
Sukhbir Singh Kapoor	65,748 ordinary B shares
Stephen James Horne	65,748 ordinary B shares
David William Beak	51,051 ordinary B shares
Christopher Barella	32,487 ordinary B shares
Martin Kenneth Gray	36,354 ordinary B shares
David John Bevan	20,111 ordinary B shares
Paul Stuart Creasey	17,790 ordinary B shares

Arpana Mangrola
William Kenneth Stimson
Andrew Craig Hamilton
Michael Ronald Spalding

20,111 ordinary B shares
14,998 ordinary B shares
25,198 ordinary B shares
39,998 ordinary B shares

Auditors:

Grant Thornton UK LLP

Accounting reference date:

31 December

Charges:

None

Part 2: Details of the Subsidiaries

Euro Car Parts Limited

Date and place of incorporation:

Incorporated in England and Wales on 23 January 1992

Registered number:

02680212

Registered office:

Euro House, Fulton Road, Wembley Industrial Estate, Wembley, Middlesex, HA9 0TF

Issued share capital:

31,900,100 ordinary shares of £1 each

Directors:

Paul Creasey

Parvinder Ahluwalia

Sukhpal Singh Ahluwalia

David Beak

Christopher Barella

Martin Gray

David Bevan

Neil Brown

Andrew Hamilton

Stephen Horne

Sukhbir Singh Kapoor

Arpana Mangrola

Maheshkumar Shah

Michael Spalding

William Stimson

Paul Creasey

Secretary:

The Company

Shareholders:

Auditors:

Grant Thornton UK LLP

Accounting reference date:

31 December

Charges:

Description	Person(s) Entitled	Date of Creation
Legal Charge	Barclays Bank plc	6 December 1999
Legal Charge	Barclays Bank plc	1 December 2004
Legal Charge	The Governor and Company of the Bank of Scotland	9 August 2005
Legal Charge	The Governor and Company of the Bank of Scotland	11 November 2005
Legal Charge	Barclays Bank plc	5 January 2007
Legal Charge	Barclays Bank plc	18 May 2007
Legal Charge	Barclays Bank plc	1 June 2007
Legal Charge	Barclays Bank plc	5 October 2007
Legal Charge	Barclays Bank plc	4 March 2008
Legal Charge	Barclays Bank plc	30 September 2008

Euro Garage Solutions Limited

Date and place of incorporation: Incorporated in England and Wales on 19 April 1993
Registered number: 02810175
Registered office: 1 London Street, Reading, Berkshire, RG1 4QW
Issued share capital: 50 ordinary A shares of £1 each
50 ordinary B shares of £1 each
Directors: Paul Creasey
Sukhpal Singh Ahluwalia
Secretary: Paul Creasey
Shareholders: Euro Car Parts Limited
Auditors: Grant Thornton UK LLP
Accounting reference date: 31 December
Charges: None

Car Parts 4 Less Limited

Date and place of incorporation: Incorporated in England and Wales on 7 April 2011
Registered number: 07596462
Registered office: 1 London Street, Reading, Berkshire, RG1 4QW
Issued share capital: 2 ordinary shares of £1 each
Directors: David Beak
Maheshkumar Shah
Secretary: David Beak
Shareholders: Euro Car Parts Limited
Auditors: n/a
Accounting reference date: 31 December
Charges: None

Euro Car Parts Limited (Registered in Ireland)

Date and place of incorporation:	Incorporated in Ireland on 29 November 2006
Registered number:	430666
Registered office:	24-26 City Quay Dublin 2
Issued share capital:	1 ordinary share of €1
Directors:	Sukhpal Singh Ahluwalia John Michael O'Neill
Secretary:	Sukhpal Singh Ahluwalia
Shareholders:	Euro Car Parts Limited (UK Company)
Auditors:	Grant Thornton
Accounting reference date:	31 December
Charges:	None

Seebeck 31 Limited

Date and place of incorporation:	Incorporated in England and Wales on 22 April 2009
Registered number:	06884364
Registered office:	1 London Street, Reading, Berkshire, RG1 4QW
Issued share capital:	1 ordinary share of £1
Directors:	David Beak Maheshkumar Shah
Secretary:	David Beak
Shareholders:	Euro Car Parts Limited
Auditors:	Grant Thornton UK LLP
Accounting reference date:	31 December
Charges:	None

Euro Car Parts (Northern Ireland) Limited

Date and place of incorporation:	Incorporated in England and Wales on 22 April 1998
Registered number:	03550844 ¹
Registered office:	1 London Street, Reading, Berkshire, RG1 4QW
Issued share capital:	£153,062 divided into 78,062 A ordinary shares of £1 each and 75,000 B ordinary shares of £1 each.
Directors:	Sukhpal Singh Ahluwalia Paul Stewart Creasy
Secretary:	Paul Stewart Creasy
Shareholders:	Euro Car Parts Limited
Accountants:	Grant Thornton UK LLP (accounts are not audited)
Accounting reference date:	31 December
Charges:	None

¹ Company number NF003422 was confirmed by Companies House as being closed on 28 September 2011.

Automotive Data Services Limited

Date and place of incorporation: Incorporated in England and Wales on 6 December 2005
Registered number: 05645782
Registered office: 1 London Street, Reading, Berkshire, RG1 4QW
Issued share capital: 100 ordinary shares of £1 each
Directors: David Beak
Richard Leonard
Leslie Elliot
Sukhbir Singh Kapoor
Shareholders: Euro Car Parts Holdings Limited — 51 ordinary shares of £1 each
Leslie Elliot — 49 ordinary shares of £1 each
Auditors: Grant Thornton UK LLP
Accounting reference date: 31 December

Charges:

Description	Person(s) Entitled	Date of Creation
Debenture	Euro Car Parts Holdings Limited	19 February 2010

Vehicle Data Services Limited

Date and place of incorporation: Incorporated in Scotland on 10 September 2009
Registered number: SC365360
Registered office: 26 George Square, Edinburgh, Scotland, EH8 9LD
Issued share capital: £100 ordinary shares of £1 each
Directors: David Beak
David Blockley
Leslie Elliot
Sukhbir Singh Kapoor
Shareholders: David Blockley — 1 ordinary share of £1
Euro Car Parts Holdings Limited — 51 ordinary shares of £1 each
Leslie Elliot — 48 ordinary shares of £1 each
Auditors: Grant Thornton UK LLP
Accounting reference date: 31 December

Charges:

Description	Person(s) Entitled	Date of Creation
Debenture	Euro Car Parts Holdings Limited	19 February 2010

SCHEDULE 2

Warranties

Part 1 — General

1. **SHARES OF THE COMPANY AND ITS SUBSIDIARIES**

- 1.1 The issued share capital set out in part 1 of schedule 1 constitutes the entire issued and allotted share capital of the Company.
- 1.2 The Seller is the sole legal and beneficial owner of the Draco Shares shown against its name in schedule 1.
- 1.3 Each of the Subsidiaries is (directly or by other wholly-owned Subsidiaries) a wholly-owned subsidiary of the Company except for VDS and ADS which are in each case 51% owned by the Company.
- 1.4 All shares in the capital of each Group Company have been properly allotted and issued and are fully paid.
- 1.5 Save as set out in schedule 1, there is no Encumbrance over any issued or unissued shares in the capital of any Group Company and there is no subsisting agreement, arrangement or obligation (actual or contingent) to create any such Encumbrance and no person has claimed to be entitled to any such Encumbrance.
- 1.6 Save as set out in schedule 1, no Group Company has in issue any debenture or any other security.
- 1.7 No person has the right or has claimed to have a right (whether exercisable now or at a future date and whether contingent or not) to subscribe for, convert any security into or otherwise acquire, any shares, debentures or other securities of any Group Company, including (without limitation) pursuant to an option or warrant.
- 1.8 No Group Company has at any time purchased its own shares or redeemed or forfeited any shares, or agreed to do so, or entered into any contract or arrangement whereby it might become liable to do so.
- 1.9 None of the shares in any Group Company were, or represents assets which were, the subject of a transaction at an undervalue (within the meaning of section 238 or 239 of the Insolvency Act 1986) or any other transaction capable of being set aside or varied under any insolvency laws within the past 5 years.

2. **SHADOW DIRECTORS**

No person is a shadow director (within the meaning of section 251 Companies Act 2006) of any Group Company.

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3. **SUBSIDIARIES AND BRANCHES**
- 3.1 No Group Company has any interest in or is under a subsisting obligation to acquire any interest in any shares, debentures or other securities of any other body corporate other than another Group Company.
- 3.2 No Group Company has any agency, branch or other place of business or permanent establishment outside the United Kingdom.
4. **COMMISSION AND COSTS IN CONNECTION WITH SALE OF THE SHARES**
- 4.1 No person has received or is entitled to receive from any Group Company any fee or benefit (including (without limitation) any finder's fee, brokerage or other commission) or the reimbursement of any expense in connection with the sale of the Shares to the Buyer.
- 4.2 No cost or expense of whatever nature incurred in connection with the sale and purchase of the Shares has been or is to be borne by any Group Company.
5. **BUSINESS CONTINUITY**
- The business of the Group Companies as it is carried on at the date of this Agreement does not require the use of any assets owned or leased by the Seller (or, any member of the Seller's Group) or the provision of any services by the Seller (or, any member of the Seller's Group).
6. **CONSTITUTION**
- 6.1 Each Group Company is a company duly incorporated and existing under the laws of the jurisdiction specified in schedule 1 in relation to such company.
- 6.2 The copies of the memorandum and articles of association of each Group Company included in the Data Room at sections 1.2.3 and 1.2.4 are up to date are complete and accurate in all respects, have embodied in or annexed to them a complete and accurate copy of each resolution and other document required by law to be so embodied or annexed and fully set out all of the rights and restrictions attaching to each class of shares and loan capital.
- 6.3 Each Group Company is operating and has always operated its business in all respects in accordance with its memorandum and articles of association at the relevant time.
7. **INSOLVENCY**
- 7.1 Each Group Company is able to pay its debts as they fall due and has not stopped payment of its debts.
- 7.2 Insolvency Proceedings have not been commenced in relation to any Group Company or (if applicable) any part of its assets or undertaking.

- 7.3 So far as the Seller is aware, none of the directors of any Group Company has had an interim order under the Insolvency Act 1986, become the subject of a bankruptcy petition or a statutory demand, entered into any composition, compromise, deed of arrangement, moratorium, scheme or voluntary arrangement with his creditors, whether under the Insolvency Act 1986 or otherwise, requested or suffered the appointment of a Law of Property Act 1925, court appointed or other receiver and manager or similar officer over or in relation to the whole or any part of its undertaking, property, revenue or assets, or become subject to an administration order under section 112 of the County Courts Act 1984.
8. **AUTHORITY AND CAPACITY OF THE SELLER**
- 8.1 The Seller is a company duly incorporated and existing under the laws of Jersey.
- 8.2 The Seller has all necessary power and authority, and has taken all necessary action, to enter into and perform its obligations under this Agreement and all other agreements or instruments to be entered into by the Seller pursuant to or in connection with this Agreement.
- 8.3 This Agreement, and all agreements to be entered into by the Seller under this Agreement, constitute (or will when executed constitute) binding and enforceable obligations on the Seller in accordance with their respective terms.
- 8.4 The entering into and performance by the Seller of its obligations under this Agreement and all agreements to be entered into by the Seller under this Agreement:
- 8.4.1 will not result in a breach of any provision of the constitution of the Seller;
 - 8.4.2 will not result in a breach of, or constitute a default under, any agreement under which the Seller enjoys rights or by which it is bound;
 - 8.4.3 will not result in a breach of any order, judgment or decree of any court or governmental, administrative or regulatory body or agency to which the Seller is party or by which it is bound; and
 - 8.4.4 does not require the consent of any third party (save for any consent which has been obtained and full and accurate details of which are set out in the Disclosure Letter).
- 8.5 The Seller is able to pay its debts as they fall due and has not stopped or suspended payment of its debts.
- 8.6 The value of the assets of the Seller exceeds the amount of the Seller's liabilities, taking into account contingent and prospective liabilities.
- 8.7 No Insolvency Proceedings have commenced in relation to the Seller or (if applicable) any part of its assets or undertaking.

8.8 There are no circumstances which entitle or may entitle any person to commence any Insolvency Proceedings in relation to the Seller or (if applicable) any part of its assets or undertaking.

9. **ACCURACY AND ADEQUACY OF INFORMATION**

The information set out in schedule 1 is accurate and complete.

1. **THE ACCOUNTS**

1.1 The Company Accounts:

- 1.1.1 comply with applicable statutory requirements and were prepared in accordance with UK GAAP, save in respect of Euro Car Parts Limited (Irish Registered) which were prepared in accordance with IFRS;
- 1.1.2 give a true and fair view of the assets, liabilities and state of affairs of the relevant Group Company as at the end of the financial year to which they relate and the profits and losses of the Group Company in question as at the end of the financial year to which they relate;
- 1.1.3 accord with the accounting records of the relevant Group Company; and
- 1.1.4 applied bases and policies of accounting which were consistently applied in the audited financial statements of the relevant Group Company for each of the 3 financial years ended on the Accounts Date (a complete and accurate copy of each of which (to the extent they exist) is contained in section 2.1.2 of the Data Room).

1.2 The results shown in the audited financial statements of each Group Company and the audited consolidated financial statements of the Group Companies for each of the 3 financial years ended on the Accounts Date have not (except as disclosed therein) been affected by any extraordinary item.

1.3 The Group Accounts:

- 1.3.1 comply with all applicable statutory requirements and were prepared in accordance with UK GAAP;
- 1.3.2 give a true and fair view of the state of affairs of the Group Companies as at the Accounts Date and the profits and losses of the Group Companies for the financial year ended on the Accounts Date; and
- 1.3.3 applied bases and policies of accounting which were consistently applied in the audited consolidated financial statements of the Group Companies for each of the 3 financial years ended on the Accounts Date (a complete and accurate copy of each of which is attached to the Disclosure Letter).

1.4 Since the date that the Company Accounts and the Group Accounts respectively were approved by the directors of the Company, neither the Company nor any of its directors has become aware of any fact, matter or circumstance which, if known prior to the date of such approval, would have resulted in any change or amendment being made as an adjusting event requiring a prior year adjustment under UK GAAP to the Company Accounts or Group Accounts (as the case may be).

- 1.5 Each of the July Management Accounts and the August Management Accounts have been prepared in accordance with accounting policies consistent with those used in preparation of the Company Accounts and using reasonable estimates which are normal in the production of management accounts.
- 1.6 The Business Plan has been properly prepared by ECP in good faith based on assumptions regarded by its directors (at the time of preparation and now) to be reasonable in all the circumstances but on the basis of ECP as a standalone business (therefore excluding the Company and ADS and VDS) and for the purposes of and in the course of ECP's general business and not in contemplation of a sale of the Company. For the avoidance of doubt this Warranty does not imply any assurance that projections contained in the Business Plan will be achieved.
2. **ACCOUNTING AND OTHER RECORDS**
- 2.1 All accounting records of each Group Company:
- 2.1.1 have been properly maintained in all material respects and are up to date;
 - 2.1.2 are in the possession and control of the relevant Group Company;
 - 2.1.3 do not contain any material inaccuracies or discrepancies;
 - 2.1.4 correctly record the financial, contractual and trading position of each Group Company and the assets and liabilities (actual and contingent) and other matters which ought or would normally be expected to appear therein; and
 - 2.1.5 comply with all statutory requirements in all material respects.
- 2.2 None of the records or information of any Group Company is recorded, stored, maintained, operated, accessed or is otherwise wholly or partly dependent upon or held by any means (including any electronic, mechanical or photographic process, whether computerised or not) which (including all means of access and use) is not under the exclusive ownership and direct control of the relevant Group Company.
- 2.3 Copies or original of all written agreements which are material to the business of the Group and to which a Group Company is a party and all other documents which are material to the business of the Group owned by or which ought to be in the possession or control of a Group Company are in the possession and control of the relevant Group Company and are free from any Encumbrances.
3. **DIVIDENDS AND DISTRIBUTIONS**
- All dividends or distributions declared, made or paid by any Group Company since its incorporation have been declared, made or paid in accordance with its articles of association and applicable provisions of the Companies Acts.

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4. **DEBTORS**
- 4.1 Not less than 90% of the aggregate debts owed to the Group Companies in respect of all of the Top 30 Debtors will realise within a period of 3 months from their due dates their full value in the ordinary course of collection. For the purposes of this Warranty, “**Top 30 Debtors**” means the largest 30 debtors of the Group Companies taken as a whole ranked by the aggregate amount owed by each debtor as at the Effective Date.
- 4.2 There are no debts owing to any Group Company (whether or not due for payment) other than trade debts incurred in the ordinary and proper course of business and debts owing by other Group Companies (complete and accurate details of which are included in the Data Room at section 1.5.3.1 stated as at up to 2 Business Days before the date of this Agreement) nor has any Group Company lent any money which has not been repaid.
- 4.3 Complete and accurate details stated as at up to 2 Business Days before the date of this Agreement of the trade debtors individually in excess of £20,000 of each Group Company which are more than 60 days overdue for payment are included in the Data Room at document 4.4.3.18.
- 4.4 No Group Company has factored, sold or discounted any debts owing to it, or has agreed to do so or has engaged in any financing which is not disclosed in the Accounts or the Management Accounts.
5. **CREDITORS AND LIABILITIES**
- 5.1 No Group Company has any material creditors other than other Group Companies or any other liabilities (including contingent liabilities) other than as disclosed in the Accounts or incurred in the ordinary and proper course of business since the Accounts Date.
- 5.2 Complete and accurate details stated as at up to 20 September 2011 of the trade creditors of each Group Company to whom sums in excess of £20,000 remain unpaid at 60 days after invoice due date are included in the Data Room at document 4.4.9.3.
- 5.3 The document at 4.4.9.4 relating to payment practices of creditors since 1 January 2011 is complete and accurate.
6. **GRANTS**
- No Group Company has applied for, or received, any grant, subsidy or financial assistance from any person.
7. **BANK ACCOUNTS**
- 7.1 Full and accurate details of all bank accounts of each Group Company and bank statements setting out the credit or debit balances on such accounts as at the close of business on a Business Day not more than 2 Business Days before the date of this Agreement are included in the Data Room at document 4.4.3.16 and 4.4.3.17. Since that date, no payments out of any of the accounts have been made or authorised except for routine payments in the ordinary course of each Group Company’s business.

- 7.2 The bank accounts of each Group Company are operated separately from the bank accounts of any other person and there is no right of set off against moneys in any Group Company's bank accounts for the liabilities of any other person.
8. **FACILITIES AND BORROWINGS**
- 8.1 No Group Company has outstanding any borrowing or indebtedness in the nature of borrowing including any indebtedness for moneys borrowed or raised under any acceptance credit, bond, note, bill of exchange or commercial paper, finance lease, hire purchase agreement, trade bills (other than those on terms normally obtained), forward sale or purchase agreement or conditional sale agreement, purchase on deferred terms or other transaction having the commercial effect of a borrowing or any factored debts other than:
- 8.1.1 the term loans full and accurate details of which are included in the Data Room at documents 2.6.4.1.9, 2.6.4.2.1, 2.6.5.1, 4.2.93 and 2.6.5;
 - 8.1.2 moneys borrowed on overdraft (which do not exceed £100,000 in aggregate);
 - 8.1.3 intra-group trading indebtedness (which eliminates to zero on a consolidated basis);
 - 8.1.4 other trade debts incurred in the ordinary and usual course of business since the Accounts Date (none of which exceeds £10,000 and which do not exceed £250,000 in aggregate).
- 8.2 Full and accurate details of all mortgages, charges and other security interests created by each Group Company or in respect of any Group Company's assets are included in the Disclosure Letter.
- 8.3 No limitation on borrowing contained in any Group Company's articles of association or in any debenture, loan stock deed or other instrument to which it is a party or applying to it has been exceeded.
- 8.4 Nothing has occurred (or been alleged to have occurred) which constitutes or might (with the giving of notice, lapse of time or fulfilment of any other condition) constitute an event of default under, or otherwise give rise to an obligation to repay prior to its stated maturity, any banking or financial facility available to any Group Company. No mortgage, charge or other security interest created by any Group Company is enforceable.
- 8.5 The existing banking and financial facilities available to each Group Company (full and accurate details of which are included in the Data Room at documents 1.6.5.5, 2.2.1.3.1, 2.2.1.5, 2.6.4.1.9, 2.6.4.2.1, 2.6.4.1.12, 2.6.5.1-2.6.5.6 (inclusive), 4.2.9.3, 1.9.1.14.42, 1.9.1.14.37, 1.9.1.8, 1.9.1.3-1.9.1.4 (inclusive), 2.6.4.2.1-2.6.4.2.9 (inclusive), 2.6.4.2.11 to 2.6.4.2.27 (inclusive), 2.6.4.2.30 to 2.6.4.2.36 (inclusive)) provide each Group Company and the Group Companies as a whole with sufficient working capital to enable it to continue to carry on its business in the manner in which it is currently carried on and at its present and reasonably anticipated level of turnover for the foreseeable future and to perform, in accordance with their terms, all its subsisting commitments and obligations.

8.6 None of the financial facilities available to any Group Company is dependent on the guarantee or indemnity of, or any security provided by, a person other than a Group Company.

9. **POSITION SINCE THE ACCOUNTS DATE**

9.1 Since the Accounts Date:

- 9.1.1 the business of each Group Company has been carried on without interruption in its ordinary and usual course and in the same manner (including nature and scope) as prior to the Accounts Date;
- 9.1.2 there has been no material adverse change in the financial or trading position of any Group Company and, so far as the Seller is aware, no event, fact or matter has occurred or is likely to occur which will or is likely to give rise to any such change (except for facts or matters likely to affect similar businesses in the United Kingdom to similar extent);
- 9.1.3 there has been no reduction in the net assets of the Group Companies taken as a whole;
- 9.1.4 each Group Company has paid all of its debts due and collected all of its receivables in each case in the ordinary course and consistent with past practice and without limitation:
 - 9.1.4.1 no Group Company has collected or sought to collect its trade or other debts on shorter terms than in the ordinary course and consistent with past practice; and
 - 9.1.4.2 no Group Company has extended or sought to extend the period of payment of any sums due to any trade or other creditors or otherwise altered its creditor payment practices outside the ordinary course of business and otherwise than consistent with past practice;
- and no employee of any Group Company has been given instructions inconsistent with or contrary to any of such matters by a director of a Group Company in the three months prior to Completion;
- 9.1.5 no direct actions have been taken or instructions communicated to any employee of any Group Company as a consequence of or in contemplation of the transaction the subject of this Agreement to increase cash balances or reduce normal levels of working capital of any Group Company by:
 - 9.1.5.1 changing trade debtor collection practices;

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- 9.1.5.2 altering existing trade creditor payment practices;
 - 9.1.5.3 changing other working capital funding/timing procedures; and/ or
 - 9.1.5.4 delaying inventory purchases in a manner inconsistent with normal practices and procedures;
 - 9.1.6 no person has done or omitted to do any act or thing (other than in the ordinary course of business):
 - 9.1.6.1 with the intention of altering the amount of working capital that is ordinarily available to each Group Company and which will be available to the Company at Completion; or
 - 9.1.6.2 notwithstanding the intention of such act or omission, which has had, will have or may have such effect;
 - 9.1.7 there has been no change to the policy of any Group Company regarding bad and/ or doubtful debts;
 - 9.1.8 no Group Company has (other than in the ordinary course of its business) acquired or disposed of or agreed to acquire or dispose of any asset having a value of greater than £100,000 or assumed or incurred, or agreed to assume or incur, any liability, obligation or expense exceeding £100,000;
 - 9.1.9 no Group Company nor the Seller has done anything, or omitted to do anything, which might prejudicially affect any Group Company's goodwill or the continuation of its business on substantially the same terms as at present;
 - 9.1.10 there has been no change in the accounting reference period of any Group Company nor has any accounting period of any Group Company ended for corporation tax purposes;
 - 9.1.11 no Group Company has created, allotted or issued any share or loan capital or written off or reduced any of its share or loan capital;
 - 9.1.12 no Group Company has declared or paid any dividend or other distribution;
 - 9.1.13 no Group Company has capitalised any reserves;
 - 9.1.14 no resolution has been passed or agreed to by the members of any Group Company or the holders of any class of shares in the capital of any Group Company and there has been no decision or agreement of members having the effect of a members' resolution;
 - 9.1.15 no Group Company has increased the salary of any employee or declared or paid any bonus;

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- 9.1.15.1 to its salaried employees outside of the ordinary course of business; or
 - 9.1.15.2 to any employee whose salary exceeds £75,000 per annum;
 - 9.1.16 no Group Company has entered into any agreement outside the ordinary course of its business;
 - 9.1.17 other than in the ordinary course of business, no Group Company has entered into, terminated or varied the terms of any finance lease, hire purchase or rental or credit sale agreement or any agreement having the same or similar effect;
 - 9.1.18 other than in the ordinary course of business, no material agreement to which any Group Company is or was a party and no agreement between any Group Company and any director of any Group Company or their respective Connected Persons has been entered into, varied or terminated;
 - 9.1.19 other than in the ordinary course of business and other than in respect of debtors in respect of which the Warranties in paragraph 4 of this part 2 apply, no obligations to any Group Company have been written off or written down or assigned to a third party at less than full value or have proved to any extent irrecoverable or are now regarded as irrecoverable;
 - 9.1.20 other than regularly scheduled payments to Barclays Bank plc or other payments in the ordinary course of business no Group Company has borrowed any money (except through fluctuation of its overdraft within pre-existing facility limits) or incurred any indebtedness in the nature of borrowing (including the acquisition of assets on lease or hire purchase) and has not incurred or become committed to any capital expenditure exceeding £100,000 for any one item or £100,000 in aggregate or repaid any debt;
 - 9.1.21 no Restricted Encumbrance has been created over any of the assets of any Group Company; and
 - 9.1.22 no Group Company has offered or agreed (conditionally or unconditionally) to do any of the things referred to in any of the foregoing paragraphs.

9.2 Since 31 August 2011 no Group Company has incurred liabilities outside the ordinary course of business.

10. **INACTIVE COMPANIES**

10.1 Each of the Inactive Companies is dormant and does not trade and has not traded during the period of six years ending on the Completion Date.

10.2 None of the Inactive Companies has any assets or liabilities whatsoever (whether actual contingent, prospective or otherwise).

1. **CONDUCT OF BUSINESS**

No Group Company has (and no officer, agent or employee or any other person acting in conjunction with or performing services for or on behalf of a Group Company has) done or omitted to do any act or thing which is in contravention of any applicable legislation to which any Group Company is subject.

2. **LICENCES AND CONSENTS**

2.1 For the purposes of this paragraph 2, "Licences" includes licences, consents, permissions, permits, approvals, registrations, notifications and authorisations (whether public or private).

2.2 Each Group Company holds all necessary Licences to enable each Group Company to carry on its business in the places and in the manner in which it is currently carried on and in which it was carried out during the period of 12 months ending on the Completion Date.

2.3 The Licences referred to in paragraph 2.2 above are valid and subsisting, have been complied with by the relevant Group Company in all material respects and the Seller is aware of no reason why any of them should be suspended, cancelled, modified, revoked or not renewed on the same terms.

2.4 Without prejudice to paragraph 2.2, accurate details of all the Licences held or obtained by the Company are contained in the Data Room at sections 1.11.1.1, 1.11.1.2, 1.5.1.2.1, 1.15.4, 1.18.15 and 1.19.2.

2.5 No objection has been made to the renewal of any Licence held by any Group Company or for its benefit at any time during the 3 years prior to the date of this Agreement.

3. **TRADE ASSOCIATIONS**

Full and accurate details of all trade associations, institutions, compliance schemes and other unincorporated associations of which each Group Company is a member are contained in the Disclosure Letter (details of certain memberships are included in the Data Room at documents 1.5.1.3.2, 1.19.2.3, 1.19.2.1, 1.5.1.1.12.1, 1.5.1.1.10, 1.15.1.1.36 and 1.5.1.1.63.1), and the relevant Group Company has complied with all rules and regulations thereof.

4. **COMPETITION LAW**

4.1 No Group Company is party to an agreement, arrangement, transaction or practice which in any way restricts its freedom to carry on the whole or any part of its business solely as it sees fit or to use or exploit any of its assets in any part of the world in such manner solely as it sees fit.

- 4.2 No Group Company is or has been directly or indirectly concerned in or a party to any agreement, arrangement, transaction, concerted practice or pursued any course of conduct or omitted to do any act or thing which in whole or in part:
- 4.2.1 infringes the Competition Act 1998 or is capable of giving rise to an investigation by the Office of Fair Trading under the Competition Act 1998 or a reference to the Competition Commission under the Enterprise Act 2002;
 - 4.2.2 is in breach of any provision of the Treaty on the Functioning of the European Union (“**TFEU**”), the Treaty of Rome, the Fair Trading Act 1973, the Consumer Credit Act 1974, the Trade Descriptions Act 1968, the Consumer Protection Act 1987, the Competition Act 1998, the Financial Services and Markets Act 2000, the Enterprise Act 2002 or any other competition, anti-restrictive, trade practice, anti-trust or consumer protection law or legislation applicable in the United Kingdom or any other jurisdiction in which the Company carries on (or intends to carry on) business or has assets or on which its activities may have an effect; or
 - 4.2.3 is registrable, unenforceable or void (whether in whole or in part) or renders any Group Company (or any officer or employee of any Group Company) liable to civil, criminal or administrative proceedings by virtue of any competition, anti-trust or trade regulation or similar legislation in any country in which any Group Company has assets or carries on or intends to carry on business, or has assets or on which its activities may have an effect.
- 4.3 No Group Company:
- 4.3.1 has given any undertaking or assurance (whether or not legally binding) to; or
 - 4.3.2 is subject to any order of or investigation by; or
 - 4.3.3 has received any process, notice, request for information or other communication (formal or informal) from, any court or the European Commission, the EFTA Surveillance Authority, the Office of Fair Trading, the Competition Commission, the Serious Fraud Office, the Secretary of State for Business, Innovation & Skills (or the former Secretary of State for Business, Enterprise & Regulatory Reform or Secretary of State for Trade & Industry) or any other competition or other authority having jurisdiction in competition or anti-trust matters under any competition or anti-trust legislation in any country in which any Group Company has assets or carries on or intends to carry on business or where its activities may have an effect.
- 4.4 No Group Company is or has been a party to or concerned in any agreement or arrangement in respect of which:
- 4.4.1 an application under Article 101 and/or Article 102 TFEU for negative clearance and/or exemption was made to the European Commission; and/or
 - 4.4.2 an application under Competition Act 1998 was made to the Office of Fair Trading or any sectoral regulator.

- 4.5 No Group Company has received any aid which could be construed as falling within Article 107(1) TFEU other than aid or any alteration to existing aid falling within Article 107(3) TFEU which has been duly notified to the European Commission pursuant to Article 108(3) TFEU, and no investigation, complaint, action or negative decision in relation to the receipt or alleged receipt by any Group Company of any aid or alleged aid has been made, taken or threatened.
- 4.6 No revenue of the Seller or any Group Company in the period from 1 September 2009 up to and including Completion has arisen or resulted from or relates to any sale or other transaction in or to any person in the United States of America. None of the assets of any Group Company is within the United States of America.
5. **UNDERTAKINGS, ETC.**
- No Group Company nor any of its officers or employees in relation to their position with a Group Company is or has been party to any undertaking or assurance given to, or received any request for information, statement of objections or other communication (formal or informal) from, any national or supra-national authority or any court or governmental, administrative or regulatory body or agency, or is the subject of any injunction or court order, which in any case is still in force.
6. **DATA PROTECTION**
- 6.1 In this paragraph 6:
- 6.1.1 “**DPA 1998**” means the Data Protection Act 1998
- 6.1.2 “**Personal Data**” means data processed by or on behalf of any Group Company which is personal data within the meaning of the DPA 1998;
- 6.1.3 “**data**”, “**data controller**”, “**data processor**” and “**processing**” have the meanings given in the DPA 1998.
- 6.2 Each Group Company has notified registrable particulars of all Personal Data pursuant to section 18 of the DPA 1998 and is duly registered as a data controller for all purposes for which registration is required in respect of the business of that Group Company:
- 6.3 Each Group Company has at all times complied in all respects with, and has established all procedures necessary to ensure continued compliance with, all relevant requirements of the DPA 1998 (including the data protection principles set out therein).
- 6.4 No Group Company has received any notice or complaint (including any information, special information, enforcement notice or notice of a warrant issued under Schedule 9 of the DPA 1998) alleging non-compliance with the DPA 1998 or requesting information relating to its data protection policies or practices and there are no circumstances which may give rise to any such notice or complaint being given or made.

- 6.5 No person has been awarded compensation from any Group Company under the DPA 1998, no claim for such compensation is outstanding and there are no circumstances which may give rise to a claim for such compensation being made.
- 6.6 No order has been made against any Group Company for the rectification, blocking, erasure or destruction of data under the DPA 1998, no application for such an order is outstanding and there are no circumstances which may give rise to an application for such an order being made.
- 6.7 Each Group Company has complied in all respects with, and has established all procedures necessary to ensure continued compliance with, all relevant requirements of the Privacy and Electronic Communications (EC Directive) Regulations 2003 in respect of the use of electronic communications (including email, text messaging, fax machines, automated calling systems and non-automated telephone calls) for direct marketing.
- 6.8 The data utilised by each of the Group Companies in their business and/or transferred to any of the Group Companies' customers and/or business partners (including transfers to other companies within the group of companies of which the Group Company are part) has been lawfully obtained and the relevant Group Company is entitled to use the same, transfer the same and grant such rights therein as it grants to its customers and/or business partners in respect of such data.
7. **PRODUCTS AND SERVICES**
- 7.1 No Group Company has sold or supplied goods and has not ordered or has in stock goods or supplied any services or rights which are or were or are likely to become defective or dangerous or the subject of negligence claims or which contain any errors or omissions or which did not or do not comply in any respect with any warranty, indemnity or representation expressly or impliedly made by any Group Company or with any applicable laws, regulations, standards and requirements and which, taken as a whole, would be material to the Group Companies as a whole.
- 7.2 Other than as provided for in their standard terms of business referred to in paragraph 2.1 of part 4 of this schedule or as provided for in customers' terms of business referred to in the Disclosure Letter in respect of this Warranty, no Group Company has given any guarantee, indemnity or warranty or made any representation in respect of any goods or services sold or supplied or contracted to be sold or supplied by it save for any guarantee, indemnity or warranty implied by law nor (save as aforesaid) is subject to any liability or obligation to service, repair, maintain or take back or otherwise do or not do anything in respect of any goods or services that would apply after any such goods or services have been delivered or supplied by it.
- 7.3 No goods have been provided by any Group Company to any customer on a sale or return or consignment basis which, taken as a whole, are material to the Group Companies.
- 7.4 There are no outstanding customer claims or complaints made to any Group Company which, taken as a whole, are material to the Group Companies taken as a whole.

- 7.5 There are no, and there have not been in the period of 12 months immediately preceding Completion any, disputes between any Group Company and any of its customers or suppliers which are material to the Group Companies taken as a whole.
8. **BOOKS, RECORDS AND RETURNS**
- 8.1 The statutory books (including all registers and minute books) to be kept by each Group Company under applicable law and regulation:
- 8.1.1 are in the possession and ownership or under the control of that Group Company;
- 8.1.2 are up-to-date and have been properly maintained on a consistent basis; and
- 8.1.3 contain accurate and complete records of the matters which should be dealt with in those books and registers in accordance with applicable law and regulation.
- 8.2 No claim or allegation has been received by any Group Company that any of the books, registers and records referred to in paragraph 8.1 of this part 3 is incorrect or should be rectified.
- 8.3 Each Group Company has duly and punctually made all returns to and filed all documents which it is required to file with the Registrar of Companies or any other authority or person and all such returns and documents were when filed accurate or complete.
9. **LITIGATION**
- 9.1 No Group Company is engaged, or has during the period of two years ending on the date of this Agreement been engaged, in any litigation, arbitration, mediation, conciliation, expert determination, adjudication or other dispute resolution process or criminal or administrative proceedings (a “**Litigation Claim**”), whether as claimant or defendant or in any other capacity except for Litigation Claims where the quantum or likely quantum of any such Litigation Claim is in a sum not exceeding £5,000.
- 9.2 No Group Company has received in the period of two years ending on the Completion Date notice that it or any of its officers or employees is subject to any investigation, inquiry or disciplinary or enforcement proceedings or other process (including any criminal investigation, inquiry, enforcement or other process) by any governmental, administrative, regulatory or law-enforcement body or agency nor is any Group Company in dispute with any such body or agency.
- 9.3 There are no dispute resolution processes, proceedings and other processes, disputes, investigations or inquiries such as are referred to in paragraphs 9.1 and 9.2 of this part 3 pending or, so far as the Seller is aware, threatened by or against any Group Company.
- 9.4 There is no dispute or disagreement between any Group Company and any government department or agency or any regulatory body in any jurisdiction and, so far as the Seller is aware, there are no facts or circumstances which might give rise to any such dispute or disagreement.

9.5 There is no outstanding judgment, order, decree, award or decision of a court, tribunal, arbitrator or other person in any jurisdiction against any Group Company or so far as the Seller is aware against a person for whose acts or defaults any Group Company may be liable.

9.6 Paragraph 9.1 does not apply to any claims by or against any person employed or engaged by a Group Company (in respect of which part 7 of this schedule applies).

1. **MATERIAL CONTRACTS**

- 1.1 A complete and accurate copy of, or information regarding, each material agreement under which a Group Company enjoys rights or by which a Group Company is bound at the date of this Agreement is included in the Data Room at sections 1.5.1.1.1 to 1.5.1.1.68 (inclusive) and section 4.4.1.2 and document 1.15.4.
- 1.2 Each agreement referred to in paragraph 1.1 of this part 4 is valid, binding and enforceable in accordance with its terms and none of the parties to any such agreement is in default of any such agreement and, so far as the Seller is aware, there are no grounds for or any allegations that grounds exist for the termination, avoidance, rescission or repudiation of any such agreement.
- 1.3 There has been no material breach, whether by a Group Company or otherwise, of any of the agreements referred to in paragraph 1.1 of this part 4, and no Group Company has received notice alleging any such material breach.
- 1.4 No threat or claim of any default has been made by or against any Group Company in relation to any of the agreements referred to in paragraph 1.1 of this part 4.
- 1.5 There is no subsisting dispute between any Group Company and any other person in relation to any of the agreements referred to in paragraph 1.1 of this part 4.
- 1.6 No Group Company has given or received notice terminating any of the agreements referred to in paragraph 1.1 of this part 4.
- 1.7 No Group Company is a party to or liable under any material agreement, and no Group Company has submitted an offer or tender which is capable of being converted into an agreement:
 - 1.7.1 which is not in the ordinary course of business of that Group Company or which is not on arm's length terms;
 - 1.7.2 which provides for any financial commitment of any party to be adjusted with reference to any index of retail prices or other index or exchange;
 - 1.7.3 which is incapable of performance in accordance with its terms within six months of the date on which it was entered into or undertaken;
 - 1.7.4 which cannot be terminated by the relevant Group Company on three months' notice or less without any payment by that Group Company (whether by way of compensation or otherwise);
 - 1.7.5 which limits the ability of any Group Company to carry on any business in any part of the world in such a manner as it thinks fit;

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- 1.7.6 pursuant to which any Group Company has disposed of any shares or business and remains subject to any actual or contingent liability;
- 1.7.7 which involves or is likely to involve obligations, restrictions, expenditure or receipts of an unusual or onerous or exceptional nature or magnitude; or
- 1.7.8 which requires the Company to pay any commission, finders' fees, royalty or the like.
- 1.8 No Group Company is, or has agreed to become, a member of any partnership, joint venture or consortium (other than the trade associations full and accurate details of which are included Data Room) or a party to any other arrangement for sharing income, profits, losses or expenses.
- 1.9 Except as disclosed in the Accounts, there are no material capital commitments entered into or proposed by any Group Company. For this purpose a "material" capital commitment is one involving capital expenditure over £100,000.
- 1.10 For the purposes of this paragraph 1, a "material agreement" is:
- 1.10.1 any agreement, contract or commitment (save for those with any customer or supplier of any Group Company) which involves a future commitment by the relevant Group Company in excess of £50,000 and which cannot be terminated without liability on 90 days or less notice;
- 1.10.2 in the case of contracts with suppliers, those agreements with the 60 largest suppliers of the Group Companies (taken as a whole) as identified in the Data Room at document 1.5.1.1.1.1 to 1.5.1.1.1.59 (inclusive); and
- 1.10.3 in the case of contracts with customers, those agreements with the 30 largest customers of the Group Companies (taken as a whole) as identified in the Data Room at document 1.5.1.1.2.1 to 1.5.1.1.2.17 (inclusive)
2. **TRADING**
- 2.1 A complete and accurate copy of the standard terms upon which each Group Company carries on its business or provides goods and services to any person in relation to its business is contained in the Data Room at section 1.4.1 and no Group Company provides nor has provided goods or services to any person on terms which differ in any material respect from these standard terms.
- 2.2 Neither in the financial year up to the Accounts Date nor since the Accounts Date has any one customer of a Group Company (including, for this purpose, any person in any way connected with such customer) or any one supplier to a Group Company (including, for this purpose, any person in any way connected with such supplier) accounted for more than three per cent of the aggregate amount of purchases from or supplies to that Group Company.

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- 2.3 There is no one customer (including, for this purpose, any person in any way connected with such customer) or supplier (including, for this purpose, any person in any way connected with such supplier):
- 2.3.1 who accounts for three per cent. or more of the purchases from or supplies to (as applicable) any Group Company;
 - 2.3.2 on whom any Group Company or the Group as a whole is substantially dependent; or
 - 2.3.3 the cessation of dealings with whom would materially and adversely affect the business of that Group Company or the Group Companies as a whole.
- 2.4 In the 3 years prior to the date of this Agreement, no customer of or supplier who accounts for three per cent. or more of the purchases from or supplies to (as applicable) any Group Company or who is otherwise material to any Group Company has:
- 2.4.1 ceased purchasing from or supplying the relevant Group Company;
 - 2.4.2 significantly reduced its purchases from or supplies to the relevant Group Company; or
 - 2.4.3 substantially changed the terms on which it is prepared to trade with the relevant Group Company,
and, so far as the Seller is aware, no such customer or supplier is reasonably likely following signature or completion of this Agreement:
 - 2.4.4 to cease purchasing from or supplying the relevant Group Company;
 - 2.4.5 significantly to reduce its purchases from or supplies to the relevant Group Company; or
 - 2.4.6 substantially to change the terms on which it is prepared to trade with the relevant Group Company.

3. **POWERS OF ATTORNEY AND AUTHORITIES**

No Group Company has granted authority to any person (except a director of the Group Company in question) to act as agent or attorney for a Group Company or otherwise bind a Group Company, or do or agree to do anything on behalf of any Group Company other than authority to employees employed by any Group Company as at the date of this Agreement to enter into routine trading contracts in the normal course of their duties, full and accurate details of which are included in the Data Room at section 1.2.12.1.

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4. **OUTSTANDING OFFERS**
No offer, tender or the like is outstanding and is capable of being converted into an obligation binding on any Group Company having a value in excess of £100,000, whether by acceptance or other act of some other person or in any other way.
5. **GUARANTEES AND INDEMNITIES**
By reference to the Data Room, the Disclosure Letter sets out against this Warranty full and accurate details of all outstanding guarantees, indemnities, security agreements, comfort letters or other analogous or similar agreements given by any Group Company in respect of the obligations and liabilities of any person other than a Group Company, or by any person other than a Group Company in respect of any obligation or liability of a Group Company. No claim has been made under any such outstanding guarantee, indemnity, surety or other analogous or similar agreement given for the benefit of any Group Company and where such guarantee, indemnity, surety or analogous or similar agreement has been given by a Group Company, no Group Company has received notice of any such claim.
6. **INSIDER CONTRACTS**
- 6.1 No Group Company is a party to, nor have the profits or financial position of any Group Company during the period of six years ending on the Accounts Date been affected by, any agreement, arrangement or understanding (whether legally binding or not) which is not and was not entirely on arm's length terms. No Group Company has transferred any asset to or received any asset from the Seller or any member of the Seller's Group other than by way of sale for market value or by way of lawfully declared dividend.
- 6.2 Complete and accurate details of all outstanding Borrowings between any Group Company and any Connected Persons of it (including any Borrowings to be released, novated or capitalised by the date of this Agreement) are included Data Room.
- 6.3 No Group Company has agreed to guarantee or provide any security or indemnity in relation to any debt or obligation of any Connected Person of it nor (without limitation) has any Group Company granted or agreed to grant any qualifying third party indemnity provision or qualifying pension scheme indemnity provision, as defined in the Companies Acts.
- 6.4 Without limitation, no Group Company has made or agreed to make any loan or quasi loan or entered into a credit transaction (or given or agreed to give a guarantee or provide security in relation to such loan, quasi loan or credit transaction) or entered into a related arrangement or other relevant transaction or arrangement in contravention of the Companies Acts. Without limitation and whether or not permitted under the Companies Acts, no Group Company has made or agreed to provide a director of any Group Company or its holding company with funds to meet or avoid expenditure incurred or to be incurred by him in defending any proceedings or in connection with any application for relief.

- 6.5 Save for the Borrowings referred to in paragraph 6.2 of this part 4, there is not outstanding, and there has not at any time during the last two years been outstanding, any agreement, arrangement or understanding (whether legally binding or not) to which any Group Company is, or was, a party in which:
- 6.5.1 the Seller and its respective Connected Persons;
 - 6.5.2 any person who at the time of such agreement, arrangement or understanding was beneficially interested in any Group Company's shares or any Connected Person of such person;
 - 6.5.3 any director, officer, employee or consultant or former director, officer, employee or consultant of any Group Company, is or was interested, whether directly or indirectly.
- 6.6 Neither the Seller nor the directors of any Group Company nor any of their respective Connected Persons has any interest, direct or indirect, in any business which competes with that now carried on by a Group Company or intends to acquire any such interest.
- 6.7 Save in respect of the Properties no Group Company has at any time in the two years prior to the date of this Agreement acquired or leased, licensed or hired any asset from or transferred or leased, licensed or hired any asset to the Seller or the directors of any Group Company or any of their respective Connected Persons.
7. **CONSUMER CONTRACTS**
- In relation to any agreements formed by any Group Company with consumers the relevant Group Company has complied with all relevant requirements of applicable consumer law.
8. **EFFECT OF AGREEMENT**
- The sale of the Shares to the Buyer and the entry into, compliance with and completion of this Agreement will not:
- 8.1 result in a breach of the memorandum or articles of association of any Group Company;
 - 8.2 result in a breach of, or constitute a default under, any agreement, understanding or arrangement under which any Group Company enjoys rights or by which it is bound;
 - 8.3 result in a breach of, or constitute a default under, any law to which any Group Company is bound or subject in any jurisdiction or any order, judgment or decree of any court or agency by which the Company is bound or to which it is subject;
 - 8.4 entitle any person to terminate or vary its rights and obligations under any agreement, understanding or arrangement under which any Group Company enjoys rights or by which it is bound, nor give rise to any obligation to make any payment to any person and which (in all such cases) would not but for such sale, entry into or compliance and completion have existed; and

8.5 create or accelerate any obligation of any Group Company or cause or require any Group Company to lose or dispose of any right or asset or any interest in any asset, including by way of the imposition or crystallisation of any Encumbrance on any asset.

1. **ASSETS SUFFICIENT FOR THE BUSINESS**

The assets and rights owned by each Group Company, together with assets held under any license, finance lease, hire purchase and rental or credit sale agreements contained in the Data Room at sections 1.11.1.1, 1.15.1 and 1.15.4.1 comprise all assets and rights necessary for the continuation of the business of that Group Company as carried on at the date of this Agreement.

2. **OWNERSHIP AND POSSESSION OF ASSETS**

2.1 All assets included in the Accounts or acquired by any Group Company since the Accounts Date (other than any asset held under a finance lease, hire purchase and rental or credit sale agreement are solely legally and beneficially owned by that Group Company free from Restricted Encumbrances and no person has claimed to be entitled to a Restricted Encumbrance in respect of any such asset.

2.2 All tangible assets owned by any Group Company, or which any Group Company has the right to use, are situated in the United Kingdom and in the possession and ownership or under the control of that Group Company.

2.3 No Group Company is party to, or liable under, a lease, hire, hire purchase, credit sale, deferred payment or conditional sale or purchase agreement, in any case which is material to the Group Companies as a whole, except for those agreements referred to in the Disclosure Letter by reference to this Warranty and contained in the Data Room.

3. **VULNERABLE ANTECEDENT TRANSACTIONS**

3.1 No Group Company has been a party to any transaction pursuant to or as a result of which an asset owned, purportedly owned or otherwise held by any Group Company is liable to be transferred or re-transferred to another person, or which gives or may give rise to a right of compensation or other payment in favour of another person.

3.2 Without limiting paragraph 3.1 of this part 5, no Group Company has been a party to any transaction to which the provisions of sections 238 (transactions at an undervalue), 239 (preferences), 339 (transactions at an undervalue), 340 (preferences) or 423 (transactions defrauding creditors) of the Insolvency Act 1986 may still be applicable.

4. **INSURANCE**

4.1 Complete copies of all insurance policies maintained by each Group Company are contained in the Data Room.

4.2 Each Group Company maintains, and has at all material times maintained, adequate insurance in respect of all of its assets of an insurable nature against fire, accident, theft, loss, damage and injury in amounts representing their full replacement or reinstatement values, against third party loss (including by way of product liability, employer's liability, and public liability insurance), loss of profits, business interruption and all other risks

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- required by applicable law or regulation to be covered by insurance or normally insured against by persons operating the same type of business as the Group Company in question.
- 4.3 All premiums due on the subsisting insurance policies of each Group Company have been duly paid.
- 4.4 No subsisting insurance policy of any Group Company is subject to any special or unusual limits, terms, exclusions or restrictions, and no Group Company has been refused insurance during the period of three years ending on the date of this Agreement.
- 4.5 The subsisting insurance policies of each Group Company will continue in full force and effect without alteration notwithstanding sale of the Shares to the Buyer under this Agreement.
- 4.6 So far as the Seller is aware, there are no existing circumstances which could lead to any liability under any Group Company's insurance policy being avoided by the insurers or to any of the policies being revoked or rendered void or voidable.
- 4.7 The Data Room contains at section 1.10.6.1 details of all insurance claims made by any Group Company during the period of three years ending on the date of this Agreement.
- 4.8 The Data Room contains:
- 4.8.1 at document 1.10.6.1.1 — Group Company ERS Claims History as at 11 September 2011 which sets out claims involving motor vehicle accidents involving vehicles used by Group Companies;
 - 4.8.2 at document 4.4.10.2. — Group Company AXA PL Claims Experience and AXA EL Claims Experience 26 September 2011 which sets out public/products liability claims and employers liability claims;
 - 4.8.3 at document 1.10.6.1.6 — Group Company RSA Total Claims as at 2 August 2011 which sets out fire and special perils claims and also includes business interruption claims, money insurance claims and theft claims; and
 - 4.8.4 at document 4.4.10.3 — Group Company ACE Claims as at 26 September 2011 which sets out claims relating to personal accidents, business travel, employers and public liability claims made in relation to the years 2009 and 2010;
 - 4.8.5 at document 1.10.6.1.9 — Maven Underwriters sets out details of historic PA/travel insurance claims.
5. **STOCKS**
- 5.1 The stocks, work-in progress, packaging and promotional materials held or ordered by each Group Company are adequate, but not materially excessive, to satisfy current trading requirements of that Group Company.

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- 5.2 The Group Companies' stock taken as a whole is in good condition and of satisfactory quality and its value is properly provided for in the July Management Accounts and the August Management Accounts net of an appropriate provision for stock which is obsolete, obsolescent, slow-moving, unusable or unsaleable.
6. **CONDITION AND MAINTENANCE OF PLANT**
- 6.1 All plant, machinery, vehicles and office and other equipment owned or used by each Group Company:
- 6.1.1 are in good repair and condition (subject to fair wear and tear); and
- 6.1.2 have been regularly maintained to a good technical standard and in accordance with safety regulations usually observed in relation to equipment of the relevant type, the provisions of any applicable finance leases and hire purchase, rental, credit sale and other similar agreements and all applicable statutes and regulations currently in force.
- 6.2 Maintenance contracts are in full force and effect in respect of all assets of each Group Company which it is normal or prudent to have maintained by independent or specialist contractors and in respect of all assets which any Group Company is obliged to maintain or repair under any finance lease or hire purchase, rental, credit sale or other similar agreement.
- 6.3 All vehicles owned or used by a Group Company are roadworthy and duly licensed.
7. **LEASED ASSETS**
- No Group Company holds any material asset under a finance lease or a hire purchase, rental, credit sale or other similar agreement.
8. **CHARGES**
- All charges in favour of any Group Company and which require registration under applicable provisions of the Companies Acts have been duly registered and are valid and enforceable.

1. **DEFINITIONS**

1.1 The definitions in this paragraph apply in this Schedule 2 Part 6:

“ **Current Use** ” means the use identified for each Property as set out in document D1 of the Disclosure Bundle.

“ **Previously-owned Land and Buildings** ” means any land and buildings that have, at any time before the date of this agreement, been owned (under whatever tenure) and/or occupied and/or used by the Company or any of its Subsidiaries, but which are either:

- (a) no longer owned, occupied or used by the Company nor any of its Subsidiaries, or
- (b) are owned, occupied or used by one of them but pursuant to a different lease, licence, transfer or conveyance.

“ **Tamworth** ” means the Leasehold Property being E4, Pooley Hall Drive, Birch Coppice Business Park, Dordon, Tamworth registered at the Land Registry with title number WK455793.

“ **Title Documents** ” means all deeds documents and evidence of title:

- (c) in respect of Wembley and Tamworth:
 - (i) revealed by searches at HM Land Registry and HM Land Charges Registry and all matters which would be shown by the following searches: local authority, water and drainage, index map, chancel repair and, in relation to Tamworth, coal authority;
 - (ii) contained in the deeds to the Properties which have been made available to the Buyer and a record/index of which is contained in the Data Room at document 4.4.2.9 and 4.4.2.10; and
 - (iii) contained in the Data Room at sections 1.18.3.74 and 1.18.3.78.
- (d) in respect of the Leasehold Properties (listed in Part 2 of document D1 of the Disclosure Bundle) those contained in the Data Room at sections 1.18.3.2 to 1.18.3.88 (inclusive) 4.4.2.22.1 and 4.4.2.5 but excluding any schedules of condition referred to in such Leasehold Properties or contained in the Data Room;

“ **Wembley** ” means:

- (i) the Leasehold Property being Euro House, Fulton Road, Wembley registered at the Land Registry with title number NGL890009; and
- (ii) the Leasehold Property being land on the north side of Fourth Way, Wembley registered at the Land Registry with title number NGL890012

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2. **THE PARTICULARS OF THE PROPERTIES**
The particulars of the Properties set out in document D1 of the Disclosure Bundle are true, complete and accurate.
3. **EXTENT OF PROPERTY INTERESTS**
- 3.1 The Properties are the only land and buildings owned, used or occupied by the Company and its Subsidiaries.
- 3.2 Neither the Company nor any of its Subsidiaries has any right of ownership, right of use, option, right of first refusal or contractual obligation to purchase, or any other legal or equitable right, estate or interest in, or affecting, any land or buildings other than the Properties.
4. **RESIDUAL LIABILITY**
- 4.1 Neither the Company, nor any of its Subsidiaries, has any actual or contingent liability in respect of Previously-owned Land and Buildings
- 4.2 Save as set out in the Title Documents, neither the Company, nor any company that is or has at any time been a subsidiary of the Company, has given any guarantee or indemnity which is subsisting for any liability relating to any of the Properties, any Previously-owned Land and Buildings or any other land or buildings.
5. **TITLE**
- 5.1 The Company, or the Subsidiary identified as the proprietor in document D1 of the Disclosure Bundle, is solely legally and beneficially entitled, and save as set out in the Title Documents or disclosed in the Data Room at sections 1.18.2.2 to 1.18.2.7 (inclusive) and 1.18.3.2 to 1.18.3.88 (inclusive) has a good and marketable title, to each of the Properties.
- 5.2 The Company, or the Subsidiary identified as the proprietor in document D1 of the Disclosure Bundle is in possession actual occupation of the whole of each of the Properties on an exclusive basis, and so far as the Seller is aware, no right of occupation or enjoyment has been acquired by any third party, and neither the Company nor any subsidiary has granted, or agreed to grant, any right of occupation or enjoyment in respect of the Properties to any third party.
- 5.3 Save as where indicated otherwise in document D1 of the Disclosure Bundle, Field Seymour Parkes hold to the order of the Company the originals of all the title deeds and documents necessary to prove good and marketable title to the Properties.

- 5.4 There is no circumstance that could render any transaction affecting the title of the Company, or any of its Subsidiaries, to any of the Properties liable to be set aside under the Insolvency Act 1986.
- 5.5 Save as set out in the Title Documents, there are no insurance policies relating to any issue of title affecting the Properties.
6. **LEASEHOLD PROPERTIES**
- 6.1 The unexpired residue of the term granted by each Lease is vested in the Company, or its Subsidiaries, and is valid and subsisting.
- 6.2 In relation to each Lease, there is no subsisting material breach of any covenants, restrictions, stipulations and other encumbrances.
- 6.3 In relation to each Lease, all principal rent and additional rent and all other sums payable by each lessee, tenant, licensee or occupier under each Lease (Lease Sums) have been paid.
- 6.4 No premium or principal rent has been taken or accepted from or agreed with any lessee, tenant, licensee or occupier under any Lease beyond what is legally permitted.
7. **ENCUMBRANCES**
- 7.1 Save as set out in the Title Documents or disclosed in documents 1.18.2.2.2, 1.18.2.3.2, 1.18.2.4.3, 1.18.2.6.1, 1.18.2.7.1, 1.18.2.4.3, 1.18.3.27.9.2, 1.18.3.27.10.2, 1.18.3.78.3, and 2.6.4.2.11 to 2.6.4.2.14 (inclusive) of the Data Room, the Properties (and the proceeds of sale from them) are free from:
- 7.1.1 any mortgage, debenture, charge (whether legal or equitable and whether fixed or floating), rentcharge, lien or other right in the nature of security; and
- 7.1.2 any agreement for sale, estate contract, option, right of pre-emption or right of first refusal,
- and there is no agreement or commitment to give or create any of them.
- 7.2 Save as set out in the Title Documents, the Properties are not subject to the payment of any outgoings other than non-domestic local business rates and water and sewerage charges (and in the case of the Leasehold Properties, principal rent, insurance premiums and service charges).
- 7.3 So far as the Seller is aware, the Properties are not subject to any matters which are, or (where title to any of the Properties is not registered) would be unregistered interests which override registered dispositions under Schedule 3 to the Land Registration Act 2002.
- 7.4 No notice which is of continuing relevance of any alleged breach has been received by the Company or the Subsidiaries in respect of any covenants, restrictions, stipulations and other encumbrances affecting the Properties and, so far as the Seller is aware, there is no matter or circumstances which would lead to any such notice.

- 7.5 No notice of any circumstances which (with or without taking other action) would entitle any third party to exercise a right of entry to, or take possession of all or any part of the Properties, or which would in any other way affect or restrict the continued possession, enjoyment or use of any of the Properties has been received by the Company or the Subsidiaries and, so far as the Seller is aware, there is no matter or circumstances which would lead to any such notice.
- 7.6 So far as the Seller is aware, there are no matters of an unusual or onerous nature which are registered as local land charges or, although not registered, are capable of registration as local land charges and no notice of any such matters has been received by the Company or any of the Subsidiaries.
8. **PLANNING AND USE OF PROPERTIES**
- 8.1 The definitions and rules of interpretation in this sub-paragraph apply in this paragraph 8:
“ **Planning Acts** ” means the Town and Country Planning Act 1990; the Planning (Listed Buildings and Conservation Areas) Act 1990; the Planning (Hazardous Substances) Act 1990; the Planning (Consequential Provisions) Act 1990; the Planning and Compensation Act 1991; the Planning and Compulsory Purchase Act 2004; the Planning Act 2008; and any other legislation from time to time regulating the use or development of land; and
“ **Statutory Agreement** ” means an agreement or undertaking entered into under section 18 of the Public Health Act 1936; section 52 of the Town and Country Planning Act 1971; section 33 of the Local Government (Miscellaneous Provisions) Act 1982; section 106 of the Town and Country Planning Act 1990; section 104 of the Water Industry Act 1991; and any other legislation (later or earlier) similar to these statutes.
- 8.2 All of the Properties are actively used by the Company or its Subsidiaries in connection with the Business.
- 8.3 The Current Use of such of the Properties that were acquired by the Company or its Subsidiaries during the period of seven years prior to the date of this Agreement is the permitted use for the purposes of the Planning Acts.
- 8.4 No claim or liability (contingent or otherwise) under the Planning Acts in respect of the Properties, or any Statutory Agreement affecting the Properties, is outstanding, nor are the Properties the subject of a notice to treat or a notice of entry, and no notice, order resolution or proposal has been received by the Company or the Subsidiaries for the compulsory acquisition, closing, demolition or clearance of the Properties and, so far as the Seller is aware, there is no matter or circumstances which would lead to any such notice, order, resolution or proposal.
- 8.5 The Company and its Subsidiaries have received no notice of any alleged breach and have no knowledge of any subsisting breach of any planning permissions, orders and regulations issued under the Planning Acts or of any building regulations, consents and byelaws for the time being in force in relation to the Properties.

9. **STATUTORY OBLIGATIONS**

9.1 The definition in this sub-paragraph applies in this paragraph 9:

“ **Property Statutes** ” means the Public Health Acts; the Occupiers Liability Act 1957; the Offices, Shops and Railway Premises Act 1963; the Occupiers Liability Act 1984; the Construction (Design and Management) Regulations 1994; the Disability Discrimination Act 1995; the Construction (Design and Management) Regulations 2007; and all regulations, rules and delegated legislation under, or relating to, such statutes.

9.2 The Company and the Subsidiaries have not received any notices of continuing relevance alleging breaches of applicable statutory and bye-law requirements, or regulations, rules and delegated legislation, relating to the Properties and their Current Use, including (without limitation) all requirements under the Property Statutes and, so far as the Seller is aware, there is no matter or circumstance which would lead to any such notice.

10. **CONDITION**

10.1 The state of repair and condition of each of the Properties is adequate for the purpose for which the Properties are used.

10.2 Save as disclosed in the Data Room at documents 1.18.1.6 to 1.18.1.8 (inclusive), 1.18.1.11 to 1.18.1.16 (inclusive) and 1.18.3.61.2, there are no development works, redevelopment works or fitting-out works outstanding in respect of any of the Properties.

10.3 So far as the Seller is aware, in the period of five years ending on the date of this Agreement, none of the Properties has suffered from any of the following:

10.3.1 flooding;

10.3.2 subsidence;

10.3.3 heave;

10.3.4 landslip; or

10.3.5 mining activities.

10.4 Neither the Company, nor the Subsidiaries, have received any report containing materially adverse findings in the last three years from any engineer, surveyor or other professional relating to any of the Properties.

11. **COMPLAINTS AND DISPUTES**

- 11.1 No subsisting notices, complaints or requirements have been issued or made (whether formally or informally) by any competent authority or undertaking exercising statutory or delegated powers in relation to any of the Properties, the Current Use of the Properties or any machinery, plant or equipment in them, and, so far as the Seller is aware, there is no matter which could lead to any such notice, complaint or requirement being issued or made.
- 11.2 There exists no dispute between the Company, and the Subsidiaries, and the owner or occupier of any other premises adjacent to or neighbouring the Properties and neither the Company nor the Subsidiaries expect, nor is the Seller aware of, any circumstances that may give rise to any such dispute after the date of this agreement.

12. **ENVIRONMENT AND HEALTH AND SAFETY**

12.1 **Definitions**

“ **Environment** ” the natural and man-made environment, including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media;

“ **EHS Laws** ” means all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes which are legally binding and in force as at the date of this Agreement in so far as they relate to or apply to the Environment or the health and safety of any person;

“ **EHS Matters** ” means all matters relating to:

- (a) pollution or contamination of the Environment;
- (b) the presence, existence, disposal, release, spillage, deposit, escape, discharge, leak, migration or emission of Hazardous Substances or Waste;
- (c) the exposure of any person to any Hazardous Substances or Waste;
- (d) the health and safety of any person, including any accidents, injuries, illnesses and diseases;
- (e) the creation or existence of any noise, vibration, odour, radiation, common law or statutory nuisance or other adverse impact on the Environment; or
- (f) the condition, protection, maintenance, remediation, reinstatement, restoration or replacement of the Environment or any part of it;

“ **EHS Permits** ” means any permits, licences, consents, certificates, registrations, notifications or other authorisations required under any EHS Laws for the operation of the business of the Company and its Subsidiaries or in relation to any of the Properties;

“ **Harm** ” means harm to the Environment, and in the case of man includes offence caused to any of his senses or harm to his property;

“ **Hazardous Substances** ” means any material, substance or organism which, alone or in combination with others, are capable of causing Harm, including radioactive substances and asbestos containing materials; and

“ **Waste** ” means any waste, including any by-product of an industrial process and anything which is discarded, disposed of, spoiled, abandoned, unwanted or surplus, irrespective of whether it is capable of being recovered or recycled or has any value.

- 12.2 The Company and each of its Subsidiaries have obtained and have for the five years prior to the date of this Agreement complied in all material respects with all EHS Permits, all EHS Permits are in full force and effect, and, so far as the Seller is aware, there are no facts or circumstances that may lead to the revocation, suspension, variation or non-renewal of EHS Permits.
- 12.3 The Company and each of its Subsidiaries have during the period of the five years ending on the date of this Agreement complied in all material respects with all EHS Laws and, so far as the Seller is aware, there are no facts or circumstances which may lead to any breach of or liability under any EHS Laws.
- 12.4 All information provided by or on behalf of the Company or any of its Subsidiaries to any relevant enforcement authority and all records and data required to be maintained by the Company or any of its Subsidiaries under the provisions of any EHS Laws are complete and accurate in all material respects.
- 12.5 Other than in the ordinary course of business there are no Hazardous Substances at, on or under, nor have any Hazardous Substances been emitted, escaped or migrated from, any of the Properties.
- 12.6 So far as the Seller is aware:
- 12.6.1 there are, and have been, no landfills, underground storage tanks or mining operations, uncontained or unlined storage treatment or disposal areas for Hazardous Substances or Waste (whether permitted by EHS Laws or otherwise) present or carried out at, on or under any of the Freehold Properties;
- 12.6.2 there are no polychlorinated biphenyls at, on or under any of the Freehold Properties; and
- 12.6.3 there are no asbestos containing materials at, on or under any of the Properties.
- 12.7 Within the five years prior to the date of this Agreement there have been no claims, prosecutions or other proceedings against or threatened against the Company, any of the Subsidiaries or any of its respective directors, and, so far as the Seller is aware, no investigations in respect of Harm arising from the operation of the business of the

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- Company or its Subsidiaries or occupation of any of the Properties or for any breach or alleged breach of any EHS Permits, EHS Laws and so far as the Seller is aware, there are no facts or circumstances which may lead to any such claims, investigations, prosecutions or other proceedings. Within the last three years neither the Company nor any of its Subsidiaries has received any notice, communication or information alleging any liability in relation to any EHS Matters or that any works are required.
- 12.8 Neither the Company nor any of its Subsidiaries have received any enforcement, prohibition, stop, remediation, improvement or any other notice from any enforcement authority, including the Environment Agency, the Health and Safety Executive or the relevant local authority, with regard to any breach or alleged breach of any EHS Laws.
- 12.9 The employers' liability and public liability insurance cover in respect of the business of the Company and its Subsidiaries and the Properties are disclosed in 1.10.1.1.3, 1.10.1.1.5, 1.10.1.1.10, and 1.10.1.1.11 of the Data Room and details of claims that have been made or are contemplated under any such insurance cover are disclosed in 1.10.6.1.1 to 1.10.6.1.9 of the Data Room.
- 12.10 Copies of all:
- 12.10.1 Current EHS Permits;
 - 12.10.2 environmental and health and safety policy statements;
 - 12.10.3 reports in respect of environmental and health and safety audits, investigations or other assessments;
 - 12.10.4 records of accidents, illnesses and reportable diseases;
 - 12.10.5 assessments of substances hazardous to health;
 - 12.10.6 correspondence between the Company or any of its Subsidiaries and any relevant enforcement authority; and
 - 12.10.7 copies or details of all waste disposal contracts
- which are material in the context of the business of the Company or its Subsidiaries or any of the Properties and in the possession of the Company or its Subsidiaries or of which the Seller is aware are set out in sections 1.5.1.1.10, 1.5.1.1.12, 1.5.1.1.36, 1.5.1.1.63, 1.19.7.1.1 to 1.19.7.1.93 and 1.19.5.1 to 1.19.5.10 and documents 1.5.1.1.50.1, 1.19.2.1 to 1.19.2.5, 1.19.7.2.1 to 1.19.7.2.5, 1.19.7.1.1 to 1.19.7.1.93, 1.18.23.1.1 to 1.18.23.1.47, 1.19.13.1 to 1.19.13.8, 1.19.7.3.1 to 1.19.7.3.62 and 1.19.7.4.1 to 1.19.7.4.16, 1.19.5.1 to 1.19.5.10 of the Data Room.
- 12.11 Neither the Company nor any of the Subsidiaries have given nor so far as the Seller is aware received any warranties or indemnities in respect of (or have otherwise attempted to apportion) any liabilities, duties or obligations that arise under EHS Laws.

1. **EMPLOYEES, WORKERS, CONSULTANTS AND TERMS OF EMPLOYMENT OR ENGAGEMENT**

- 1.1 In this schedule a “ **person employed or engaged by a Group Company** ” means any employee of a Group Company, any director or other officer of a Group Company (whether or not the director or officer is an employee), any worker engaged by a Group Company and any person engaged by a Group Company under a contract for services.
- 1.2 Full and accurate anonymised details of each person employed by any Group Company are included in the Data Room at document 1.16.22.1 (or, in the case of the Directors, attached to the Disclosure Letter) including which company employs them, dates of commencement of employment, dates of commencement of continuous employment (where appropriate), dates of birth, notice periods, basic annual salaries or fees.
- 1.3 Copies of all template contracts for each category of person employed by any Group Company are included in the Data Room at documents 1.16.4.2.4 to 1.16.4.2.12 (inclusive).
- 1.4 Complete and accurate copies of all contracts of employment or documents relating to terms of employment or engagement for each person employed or engaged by a Group Company:
- 1.4.1 who is not employed or engaged on a template contract; or
 - 1.4.2 whose employment or engagement is terminable by the relevant Group Company on more than three months' notice; or
 - 1.4.3 whose basic rate of remuneration exceeds £75,000 per annum,
- are included in the Data Room at section 1.16.5.2 (or, in the case of the Directors, attached to the Disclosure Letter).
- 1.5 Complete and accurate copies of all current employee handbooks and manuals, benefit plans and all personnel policies, codes of conduct and disciplinary and grievance procedures applicable to any person employed or engaged by any Group Company are included in the Data Room at sections 1.16.8.1, 1.16.1 and documents 1.17.1.1.1 to 1.17.1.1.3 (inclusive) and documents 1.17.1.1.6 to 1.17.1.1.6 (inclusive).
- 1.6 There are no agreements between any Group Company and any trade union or other body representing employees, nor have any requests for recognition, or arrangements for collective information and consultation, under Schedule A1 Trade Union and Labour Relations (Consolidation) Act 1992 as amended or the Information and Consultation of Employee Regulations 2004, been received by any Group Company, nor are there any works councils, staff associations, negotiated agreements and/or other arrangements with employee representatives in place.

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- 1.7 No person previously employed or engaged by any Group Company has a right to be reinstated to or re-engaged by that Group Company.
 - 1.8 Complete and accurate details of all persons employed by a Group Company who are on secondment, maternity, paternity, adoption or other family-friendly leave are contained in the Disclosure Letter
 - 1.9 Complete and accurate details of all persons employed by a Group Company who have been absent from work due to ill health for three consecutive weeks or more in the 12 month period ending on the date of this Agreement are contained in the Data Room at documents 1.16.22.1 and 1.16.2.2.
 - 1.10 Complete and accurate details of all persons engaged by a Group Company who have failed to provide services for more than 12 consecutive weeks in the 12 month period ending on the date of this Agreement are contained in the Data Room at document 1.16.22.1.
 - 1.11 Complete and accurate details of all persons employed or engaged by a Group Company who are required to or who have stated they intend to retire in the 12 month period commencing on the date of this Agreement are contained in the Data Room at document 1.16.22.1.
 - 1.12 There is no agreement, scheme or policy of insurance for the payment of any pensions, allowances, lump sums or other like benefits on retirement or on death or during periods of sickness or disablement for the benefit of any Group Company's employees, officers or workers or any person formerly employed or engaged by any Group Company save as set out in the Disclosure Letter.
 - 1.13 Complete and accurate anonymised copies of all subsisting agreements for the provision of consultancy services or other services of personnel of or to any Group Company and details of the terms applicable to the secondment to or from any Group Company of any person are contained in the Data Room at sections 1.16.21.1.1 and 1.16.21.1.2.
 - 1.14 No Group Company has any obligation to make any payment on redundancy in excess of the statutory redundancy payment.
 - 1.15 No person employed or engaged by any Group Company is subject to a current formal disciplinary warning, proceeding or procedure.
 - 1.16 There is no compulsory retirement age applicable to any person employed or engaged by any Group Company.
 - 1.17 Each Group Company has complied with its obligations under the Employment Equality (Age) Regulations 2006 in relation to those persons employed or engaged by that Group Company who are due to retire in the 12 month period commencing on the date of this Agreement.

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- 1.18 No offer of employment or engagement has been made by any Group Company to any person:
- 1.18.1 which has not been accepted and which has not lapsed and which therefore remains outstanding at the date of this Agreement; or
- 1.18.2 which has been accepted but where the employment or engagement has not commenced.
- 1.19 No Group Company has in the six year period ending on the date of this Agreement operated nor does any Group Company intend to operate any short time working scheme or arrangement.
- 1.20 No person employed or engaged by a Group Company nor any person who was in the two year period ending on the date of this Agreement a person employed or engaged by a Group Company is entitled to any accrued but unpaid holiday pay in respect of current or any previous holiday years.
- 1.21 No Group Company has recognised nor done any act in the 12 month period ending on the date of this Agreement which might be construed as recognition of any trade union nor are any steps being taken by any employees or other individuals to procure trade union recognition so far as the Seller is aware.
- 1.22 No Group Company has, in the 3 years preceding the date of this Agreement, been a party to a relevant transfer within the meaning of the Transfer Regulations.
- 1.23 Each Group Company has complied with all obligations imposed on it by Regulations 4, 9 (in respect of Regulation 4(1) only), 13, 13A (excluding in respect of Regulations 13(A)(2)(a) to (d)), 14 and 16 of the Working Time Regulations 1998.
2. **BONUS, PROFIT SHARING AND SHARE OPTION SCHEMES**
- 2.1 There are no schemes in operation by or in relation to any Group Company under which any employee, officer or worker of any Group Company is entitled to any remuneration calculated by reference to the whole or part of the turnover, profits or sales of any Group Company or to any other form of bonus or commission.
- 2.2 No Group Company operates any approved share option scheme, share incentive scheme, approved profit sharing scheme, enterprise management incentive scheme, employee share ownership plan or unapproved share scheme under which share benefits are provided, in respect of any person employed or engaged, or formerly employed or engaged, by any Group Company.
3. **REMUNERATION**
- 3.1 No Group Company is bound or accustomed to pay monies other than in respect of remuneration or emoluments of employment or pension benefits to or for the benefit of any person employed or engaged by a Group Company.

- 3.2 No amounts due to or in respect of any person employed or engaged, or formerly employed or engaged by any Group Company (including all taxes, National Insurance contributions and pensions contributions and any other levies) are in arrears or unpaid.
- 3.3 So far as the Seller is aware no legally binding promise or commitment regarding any future variation in the terms of employment or engagement has been communicated to any person employed or engaged by any Group Company.
4. **TERMINATION OF CONTRACTS OF EMPLOYMENT OR ENGAGEMENT**
- 4.1 All subsisting contracts of service with all persons employed by any Group Company are determinable on three months' notice or less without giving rise to a claim for damages or compensation, other than a statutory redundancy payment or statutory compensation for unfair dismissal.
- 4.2 All contracts of engagement with all persons engaged by any Group Company are determinable on one month's notice or less and the relevant Group Company is not contractually obliged to make any payment as a consequence of the termination of such contract.
- 4.3 No person employed or engaged by any Group Company:
- 4.3.1 has given or received notice terminating their employment or engagement which has not yet expired; or
- 4.3.2 will be entitled to give notice terminating their employment or engagement, receive any payment or benefit, treat themselves as redundant or otherwise dismissed, claim for breach of contract or claim to be released from any obligation as a result of the execution of this Agreement or the sale of the Shares to the Buyer and, so far as the Seller is aware, no person employed or engaged by any Group Company intends to resign or terminate his employment or engagement as a result of the execution of this Agreement or the sale of the Shares to the Buyer.
5. **DISPUTES, EMPLOYEE AND OTHER CLAIMS**
- 5.1 No Group Company is involved in any dispute (including any industrial dispute) with any person employed or engaged by a Group Company (or any person who claims to be so employed or engaged) nor any person who was previously a person employed or engaged by a Group Company (or any person who claims to have been so employed or engaged) or any representative of any such person in relation to their employment or engagement by a Group Company.
- 5.2 There is no outstanding or threatened claim, legal proceeding or formal grievance against any Group Company by any person who is now (or claims to be) or has been (or claims to have been) employed or engaged by any Group Company or any dispute between any Group Company and a material number or class of its employees.

- 5.3 No enquiry into or investigation of any Group Company is existing, pending or threatened by the Commission for Racial Equality, the Equal Opportunities Commission, the Disability Rights Commission, the Equality and Human Rights Commission, any health and safety enforcement body or any other similar authority.
- 5.4 During the year ending on the date of this Agreement, no Group Company has:
- 5.4.1 given or been required to give notice of any redundancies to the relevant Secretary of State; or
 - 5.4.2 undertaken consultation with any trade union or employee representatives nor failed to comply with any obligation under Chapter II, Part IV Trade Union and Labour Relations (Consolidation) Act 1992; or
 - 5.4.3 undertaken or been required to undertake consultation with any appropriate representatives under the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006.
- 5.5 So far as the Seller is aware, there is no actual or threatened protected disclosure under section 43A Employment Rights Act 1996.
- 5.6 So far as the Seller is aware, no employee, officer or worker of any Group Company is suffering from a condition which impairs their ability to perform their duties and/or which requires or might require any adjustment within the work place pursuant to section 4A Disability Discrimination Act 1995 or section 20 Equality Act 2010.
- 5.7 Every person employed by any Group Company has current and appropriate permission to work in the United Kingdom.
6. **DATA PROTECTION**
No subject access requests made to any Group Company pursuant to the Data Protection Act 1998 by any person employed or engaged by any Group Company are outstanding and all Group Companies have materially complied with the provisions of the Data Protection Act 1998 in respect of all data held or processed by them relating to any person employed or engaged or formerly employed or engaged by any Group Company.
7. **LOANS TO EMPLOYEES OR WORKERS**
No Group Company has made any loan or advance, or provided any other form of financial assistance which remains unpaid or is still outstanding, to any person employed or engaged or formerly employed or engaged by any Group Company.
8. **EMPLOYER'S LIABILITY INSURANCE**
Each Group Company has employer's liability and public liability insurance cover in place. No claims have been made under such insurance policies.

Part 8 — Pensions

1. Except for the Pension Schemes, no Group Company is a party to (nor has it at any time been a party to) any agreement, scheme or arrangement (including any scheme or arrangement under which termination has commenced but which has not yet completed) for the provision of any pension, lump sum, or other like benefit provided or to be provided on retirement, death, ill-health, disability, or termination of employment or during periods of sickness for the benefit of any of the employees (or former employees) or directors (or former directors) or their dependants (including on an ex gratia basis) and no undertaking or assurance has been given by a Group Company to any employee (or former employee) or director (or former director) as to the introduction of any such agreement, scheme or arrangement.
2. Complete and accurate particulars of the Pension Schemes have been disclosed, including:
 - 2.1 details of all employees (and directors) who are members of the Pension Schemes and of all contributions payable to the Pension Schemes by and in respect of such employees (and directors) and the basis on which they are calculated; and
 - 2.2 a list of all employees (and directors) who will become eligible to join or benefit from the Pension Schemes upon the satisfaction of any conditions of eligibility and details of the contributions that will be payable to or in respect of such employees (and directors) and the basis on which they are calculated.
3. So far as the Seller is aware, each Group Company has at all times complied in all respects with the provisions of the Pension Schemes and of all relevant statutes, regulations and other regulatory requirements which apply to it in relation to the Pension Schemes.
4. So far as the Seller is aware, no part-time or temporary employees or former employees (or directors or former directors) have ever been excluded from membership of the Pension Schemes and no employees or former employees (or directors or former directors) have ever been excluded or treated less favourably by reason of their sex, race, sexual orientation, disability, religious belief or age.
5. The benefits under the Pension Schemes are provided on a money purchase basis within the meaning of section 181(1) of the Pension Schemes Act 1993. No assurance, promise or guarantee has been given to any person as to the level or amount of benefits to be provided under the Pension Schemes.
6. Each Group Company complies and has at all times complied with any duty to facilitate access to a stakeholder pension scheme (under part 1 of the Welfare Reform and Pensions Act 1999 and its associated regulations) and there are no circumstances which could result in any penalty for failure to comply with those requirements becoming payable by any Group Company.

7. All amounts (including contributions, premiums and expenses) payable by each Group Company to and/or in respect of the Pension Schemes that have fallen due for payment have been paid within the statutory or other legal time limits for payment and each Group Company has maintained a direct payment record.
8. There are no claims or actions (other than routine claims for benefits) in respect of the Pension Schemes in progress, pending or threatened and no circumstances exist which might give rise to any such claim or action.
9. All premiums payable under contracts of insurance relating to the payment of benefits on death in service in respect of any employee or director have been paid. The premiums payable for such insurance are calculated at the normal rates and on the normal terms of the insurer for a person in good health.
10. In relation to each employee (or former employee) whose contract of employment transferred to any Group Company from another employer under either the Transfer of Undertakings (Protection of Employment) Regulations 1981 or the Transfer of Undertakings (Protection of Employment) Regulations 2006:
 - 10.1 the Group Company has complied with its obligations (if any) under sections 257 and 258 of the Pensions Act 2004 and under the Transfer of Employment (Pension Protection) Regulations 2005; and
 - 10.2 no such employee (or former employee) was entitled to occupational pension scheme rights in respect of any period of employment prior to such transfer, other than rights relating solely to benefits for old age, invalidity or survivors (within the meaning of regulation 10(2) of the Transfer of Undertakings (Protection of Employment) Regulations 2006).
11. The Group Company is not, and has never been, an associate of (as defined in section 435 of the Insolvency Act 1986) or connected with (as defined in section 249 of the Insolvency Act 1986) any person who is or has been an employer in relation to an occupational pension scheme which is not a money purchase scheme (as defined in section 181 of the Pension Schemes Act 1993) and there are no facts or circumstances which could give rise to the Pensions Regulator taking action against any Group Company under sections 38 and 51 of the Pensions Act 2004.

1. **DEFINITIONS**

In this part 9:

“ **Applications** ” means applications for Registered Intellectual Property owned by any Group Company;

“ **Business Intellectual Property** ” means the Intellectual Property which is used in and material to the business of any Group Company;

“ **Intellectual Property** ” means all intellectual property rights, including (without limitation) patents, supplementary protection certificates, petty patents, utility models, Trade Marks, rights in designs, copyrights, database rights and topography rights (whether or not any of these rights are registered, and including applications and the right to apply for registration of any such rights) and all inventions, know-how, trade secrets, techniques and confidential information which may subsist anywhere in the world, in each case for their full term, and together with any renewals or extensions;

“ **Licence** ” means any licence, permission or consent in respect of the use of any Intellectual Property (including, without limitation, any unwritten and/or informal licensing arrangement) and any arrangement of which any licence, permission or consent forms part;

“ **Registered Intellectual Property** ” means all registered Intellectual Property, including without limitation, patents, certificates of addition, supplementary certificates of addition, supplementary protection certificates, petty patents, utility models, registered copyrights, registered trade marks, domain names, registered designs, and all other registered intellectual or industrial property rights in any part of the world; and

“ **Trade Marks** ” means business names, domain names, registered and unregistered trade marks and applications for registration of any of the above.

2. **OWNERSHIP**

2.1 The Business Intellectual Property is all the Intellectual Property necessary for the continuation of the business of the Group Companies as carried on at the date of this Agreement and is either legally and beneficially owned by one or more of the Group Companies or each relevant Group Company has a Licence to use it. The foregoing warranty is not a warranty as to non-infringement of Intellectual Property to any greater extent than the warranties set out in paragraph 5 (Infringements).

2.2 The Intellectual Property owned by any Group Company is subsisting and, so far as the Seller is aware, nothing has been done or omitted to be done by the Seller which has caused any of it to cease to be so.

2.3 Details of all of the Registered Intellectual Property owned by any Group Company and all of the Applications which are proceeding in the name of any Group Company are included in the Data Room at section 1.14.2 and the relevant Group Company is the sole legal and beneficial owner of such rights free from all Encumbrances

3. **MAINTENANCE**

3.1 To the Seller's knowledge, all documents material to the ownership of the Business Intellectual Property and to the Licences of Business Intellectual Property granted to any Group Company and, to the Seller's knowledge, all documents and materials reasonably anticipated by the Seller to be necessary for the maintenance of all applications and registrations in relation to the Business Intellectual Property owned by any Group Company form part of the records or materials in the possession, ownership or under the control of the relevant Group Company.

3.2 To the Seller's knowledge, all reasonable steps necessary for the maintenance of the Business Intellectual Property owned by any Group Company have been taken.

3.3 All application and renewal fees and other costs and charges in relation to the maintenance of all registrations and the prosecution of all applications in relation to the Intellectual Property owned by any Group Company have been paid and all steps required therefor have been taken.

3.4 There are no outstanding deadlines of the Patent Office or Trade Mark Registry (or any analogous office or registry anywhere in the world) in relation to the Intellectual Property owned by any Group Company which expire within three months of the date of this Agreement.

4. **DEALINGS AND LICENCES**

4.1 No Group Company has knowingly authorised or otherwise expressly permitted or knowingly acquiesced in any use by any third party of Business Intellectual Property it owns nor granted to any third party any right or interest in respect of the Business Intellectual Property it owns other than under a Licence disclosed pursuant to paragraph 4.2.

4.2 Save for Licences to any Group Company of commercially available off-the-shelf software (referred to in paragraph 1.1 of Part 10 (Information Technology)), copies of all material licences and agreements in relation to Intellectual Property to which any Group Company is a party or pursuant to which it enjoys rights (whether as licensor or licensee) are contained in the Data Room, or complete and accurate details of them (including as to term, termination, territory, restriction on scope of rights granted and on sub-licensing and assignment) are contained in the Data Room.

4.3 No Group Company, nor so far as the Seller is aware, any third party, is in breach of any Intellectual Property licence or agreement required to be disclosed pursuant to paragraph 4.2. No such licence or agreement is subject to termination by any third party by virtue of the transactions contemplated by this Agreement.

5. **INFRINGEMENTS**

5.1 So far as the Seller is aware, no products or activities of any Group Company infringe or have infringed any Intellectual Property of a third party.

5.2 To the Seller's knowledge, no third party has made or is making any unauthorised use or exploitation of any Business Intellectual Property owned by a Group Company or has infringed or is infringing any Business Intellectual Property owned by a Group Company and so far as the Seller is aware no Business Intellectual Property owned by a Group Company is subject of any claim, challenge or opposition.

5.3 No Group Company is on notice of or subject to any order or injunction in relation to Business Intellectual Property (including, without limitation, any prohibition or restriction on use) and none of the Business Intellectual Property is the subject of any litigation or proceedings.

6. **CONFIDENTIAL INFORMATION AND KNOW-HOW**

6.1 As far as the Seller is aware, each Group Company has at all times taken reasonable steps to keep confidential all confidential information of the Group Company that is material to its business and the disclosure of which would cause material loss or damage to that Group Company, and no Group Company has disclosed any material confidential information to any third party other than under an obligation of confidentiality where such disclosure had a material adverse effect on the Group Companies.

6.2 Each Group Company uses its reasonable efforts to enforce and operate normal commercial procedures designed to maintain the confidentiality of its confidential information.

7. **CREATION OF INTELLECTUAL PROPERTY**

All parties (whether individual, partnership or limited company) retained, commissioned, employed or otherwise engaged by any Group Company from time to time and who, in the course of such engagement solely created, discovered, conceived or developed work in which Intellectual Property subsists or arose are bound by agreements with the relevant Group Company whereby all such new and arising Intellectual Property vests or will vest in that Group Company. So far as the Seller is aware, no such party has, or has made any claim to, any right, title or interest in or in respect of such Intellectual Property or to any compensation or remuneration in relation to such Intellectual Property under section 40 Patents Act 1977.

Part 10 — Information Technology

1. IT SYSTEM
- 1.1 The software used in the business of each of the Group Companies consists entirely of generally commercially available off-the-shelf software and each Group Company is licensed (on standard terms) to use all of the software which is used in its business. A list of software which is material to the business of each of the Group Companies is included in the Data Room. The sale of the Shares to the Buyer and the entry into, compliance with and completion of this Agreement will not entitle any person to terminate any agreement in respect of software used in the business of any Group Company.
- 1.2 Details of all material IT Contracts (other than licences of commercially available off-the-shelf software and licences of software disclosed pursuant to paragraph 4.2 of Part 9 (Intellectual Property)) are included in the Data Room.
- 1.3 All computer hardware and computer software necessary for the continuation of the business of each Group Company is either legally and beneficially owned, free from Encumbrances, by or is licensed to that Group Company and is in the possession of that Group Company.
- 1.4 No Group Company and, so far as the Seller is aware, no third party, has committed any act or omission in the last twelve (12) months that would constitute a breach of any of the IT Contracts.
- 1.5 During the past twelve (12) months, the Seller has not received any written claims, disputes or proceedings in respect of any of the IT Contracts.
- 1.6 There have been no failures or defects in or security breaches of the IT System which have, in the last twelve (12) months, caused a material disruption to the business of any Group Company.
- 1.7 By reference to the Data Room, the Disclosure Letter contains details of the Group Companies':
 - 1.7.1 procedures for ensuring the security of the IT System and the confidentiality and integrity of all data stored in it; and
 - 1.7.2 high-level disaster recovery plans,as at Completion. Each Group Company complies with and has implemented such procedures and plans in all material respects.
- 1.8 Details of any current plans, proposals and uncompleted projects in relation to the IT System are set out in the Disclosure Letter.
- 1.9 To the extent that the IT System processes currency data, it complies with all applicable legal requirements for the processing of the euro.

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- 1.10 The IT System does not incorporate any source code where this imposes on any Group Company any obligation to disclose or license any software or code to any third party.
- 1.11 The IT System is sufficient for the continuation of the business of each Group Company as carried on at, and, subject to the relevant items of capital expenditure as provided for in the Business Plan, for the fulfilment of existing plans as set out in the Business Plan as at, the date of this Agreement.
- 1.12 In this Part 10 (Information Technology):
- “ **IT System** ” means the computer hardware and software used in the business of the Group Companies; and
 - “ **IT Contracts** ” means all agreements to which a Group Company is a party: (a) related to software; and (b) related to hardware.

1. **COMPLIANCE WITH THE LAW**

Each Group Company has conducted its affairs and dealt with its assets and liabilities in accordance with all applicable legal and administrative requirements.
2. **ANTI-CORRUPTION**
 - 2.1 No Group Company is, nor has at any time, engaged in any activity, practice or conduct which constitutes an offence under the Bribery Act 2010 (the “**Bribery Act**”).
 - 2.2 No person associated with any Group Company has bribed another person (within the meaning given in section 7(3) of the Bribery Act) intending to obtain or retain business for that Group Company or to obtain or retain an advantage in the conduct of business for that Group Company.
 - 2.3 Each Group Company has, and since 1 July 2011 has had, in place a bribery prevention programme comprising policies, systems and procedures designed to prevent persons associated with the Company from engaging in bribery (the “**Anti-Bribery Programme**”). Accurate details of the Anti-Bribery Programme are included in the Data Room at section 1.20.
 - 2.4 In its implementation and operation of the Anti-Bribery Programme, each Group Company applies the principles set out in the guidance published by the Secretary of State pursuant to section 9 of the Bribery Act and the bribery prevention policies and procedures set out in the Anti-Bribery Programme are consistent with the suggested procedures set out in such guidance.
 - 2.5 No Group Company nor any person associated with any Group Company is or has been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Bribery Act, no such investigation, inquiry or proceedings have been threatened or and, so far as the Seller is aware, no such investigation, inquiry or proceedings is pending nor are there any circumstances likely to give rise to any such investigation, inquiry or proceedings.
 - 2.6 For the purposes of this paragraph 2 of Part 11, a person is “**associated**” with a Group Company if that person performs or has performed services in any capacity whatsoever for or on behalf of that Group Company.
3. **ETHICAL BUSINESS PRACTICES**
 - 3.1 Each Group Company and its shareholders, officers, directors, employees, and Agents have used only legitimate business and ethical practices in its commercial operations and in promoting the Company’s position on issues before governmental authorities.

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- 3.2 No Group Company, nor any of its shareholders, officers, directors, employees or Agents, has given, offered, promised or authorised any Prohibited Payment.
- 3.3 No Group Company, nor any of its shareholders, officers, directors, employees, or Agents, has given, offered, promised or authorised the giving of money or anything of value, directly or indirectly, to any person while knowing or being aware of a probability that all or a portion of such money or thing of value would be used to make a Prohibited Payment.
- 3.4 Each Group Company and its Agents have complied in all respects with all applicable Anti-Corruption Laws.
- 3.5 Each Group Company has established, implemented and, if and as appropriate, enforced policies and procedures to:
- 3.5.1 require its Agents to abide by all applicable Anti-Corruption Laws; and
- 3.5.2 prohibit its Agents from making, receiving, providing or offering any Prohibited Payment in connection with the relevant Group Company's business.
- 3.6 With respect to all current and prospective projects and current and prospective Agent contracts, each Group Company has paid and/or agreed to pay to Agents only commissions or other sums that:
- 3.6.1 reflect the amount and level of work actually performed by the Agent;
- 3.6.2 are within the standard range of compensation paid for Agent services on such projects in the country in which the services are/were provided;
- 3.6.3 comply with all applicable Anti-Corruption Laws;
- 3.6.4 do not include reimbursement for improper entertainment; and
- 3.6.5 were paid in the country in which services are/were provided or the country of the Agent's primary residence.
- 3.7 Each Group Company has conducted due diligence with respect to each of its Agents to validate their compliance with the policies and procedures described in paragraph 3.5 of Part 11 and has written certifications from such Agents of their compliance with such policies and procedures.
- 3.8 No individual shareholder, officer, director, or employee of any Group Company, or any close relative of any of these, is a Government Official of any country in which the relevant Group Company does business.
- 3.9 Each Group Company has maintained and kept its books, records and accounts in reasonable detail, following recognised accounting principles, and such books, records and accounts accurately and fairly reflect the transactions and dispositions of the assets of that Group Company.

- 3.10 Each Group Company has devised and maintained a system of internal accounting controls sufficient to provide reasonable assurances that:
- 3.10.1 transactions have been executed and access to assets given only in accordance with management's general or specific authorisation;
 - 3.10.2 transactions have been recorded as necessary to permit preparation of periodic financial statements and to maintain accountability for assets; and
 - 3.10.3 the recorded accountability for assets has been compared with existing assets at reasonable intervals and appropriate action has been taken with respect to any differences.
- 3.11 The Disclosure Letter includes accurate details of each Group Company's Agents, consultants and joint venture partners, and payment details for such Agents, consultants, and venture partners. For the avoidance of doubt, except as set out in the Disclosure Letter, no Group Company currently has any obligations or commitments to or with respect to any existing or prospective Agent, consultant, joint venture partner or any individual or entity acting in a similar capacity.
4. **U.S. TRADE LAWS WARRANTIES**
- 4.1 No Agent has, in connection with any of the business and/or activities of the Group, and no Group Company nor its shareholders, directors, officers or employees have, in any connection, violated any applicable provisions of, or been subject to any sanctions under, the U.S. Trade Laws during the past five years. Each Group Company is currently in compliance with applicable provisions of, and is not subject to or engaging in activities that may cause it to become subject to any sanctions under, the U.S. Trade Laws. The Seller is not currently and during the last five years has not been sanctioned or restricted under the U.S. Trade Laws, including specifically, but without limitation, by being placed on the OFAC SDN list (or by being owned or controlled or deemed to be acting on behalf of any person on the SDN list), and has not engaged and is not engaging in any activities that may result in the imposition of such a sanction or restriction.
- 4.2 During the past five years, neither the Seller nor the Group nor any Group Company has violated, or engaged in any activities that may result in sanctions under, any applicable U.S. Trade Laws (and the Seller, the Group and each Group Company currently are in compliance with such Laws)
- 4.3 During the past five years, neither the Group nor any Group Company has engaged in any activities with, in, involving, or related to: (i) Cuba; (ii) Iran; (iii) Myanmar (E/k/a Burma); (iv) North Korea; (v) Sudan or (vi) Syria, including, without limitation: (i) providing services to entities located in such countries; (ii) making investments in such countries; (iii) selling or delivering products to such countries; (iv) or entering into any contract or other obligation to invest in or provide services or products to such countries or to purchase goods or services from such countries; or (v) purchasing goods or services from such countries.

SCHEDULE 3

Tax

Part 1: Tax definitions and interpretation

1. Tax definitions

In this schedule the following words and expressions shall have the following meanings unless the context requires otherwise:

“Accounts Relief”	has the meaning ascribed to it in paragraph 2.1.2 of this part;
“CAA”	the Capital Allowances Act 2001;
“CTA 2009”	the Corporation Tax Act 2009;
“CTA 2010”	the Corporation Tax Act 2010;
“Event”	any act, omission, arrangement, transaction or other event whatsoever;
“ICTA 1988”	the Income and Corporation Taxes Act 1988;
“ITEPA”	the Income Tax (Earnings and Pensions) Act 2003;
“Relevant Company”	the Company, any member of the Buyer’s Group or any other company which is, or has at any time been, treated for the purposes of any Tax as being a member of the same group of companies as the Buyer or any member of the Buyer’s Group or as being associated with the Buyer or any member of the Buyer’s Group;
“Relevant Relief”	the meaning ascribed to it in paragraph 1.1.1 of part 4;
“Relevant Returns”	the meaning ascribed to it in paragraph 5.1 of part 4;
“Relief”	any loss, relief, exemption, allowance, deduction, credit or set-off in respect of Tax or relevant to the computation of Tax and any right to repayment of Tax and: <ol style="list-style-type: none">1. any reference to the “use or set-off” of a Relief shall be construed accordingly;2. any reference to the “loss” of Relief includes the absence, non-existence, reduction or cancellation of any such Relief or such Relief being wholly or partly unavailable; and

3. any reference to a "right to repayment of Tax" includes any right to repayment supplement or interest or other similar payment in respect of Tax;

"Seller's Relief"

any Relief arising to the Company pursuant to an Event which occurred prior to Completion, other than an Accounts Relief;

"Straddle Return"

the meaning ascribed to it in paragraph 5.4 of part 4;

"Tax" or "Taxation"

all forms of taxation, duties, imposts, contributions, levies, charges and withholdings and amounts in respect or on account of taxation imposed in the United Kingdom, Ireland or elsewhere (including, without limitation, instalments required to be made under the Corporation Tax (Instalment Payments) Regulations 1998), whether or not directly or primarily chargeable against or attributable to the Company or any other person and whether or not the Company has or may have a right of reimbursement against any other person and all interest, penalties, charges and fines in respect of them;

"Tax Authority"

HM Revenue & Customs and any other authority, body or official (whether in the United Kingdom, Ireland or elsewhere) competent to assess, demand, impose, administer or collect Tax or make any decision or ruling on any matter relating to Tax and any other person who has a right to demand or recover amounts of, or in respect of, Tax or a Tax Liability;

"Tax Demand"

any notice, demand, assessment, letter or other document issued (or any return or other document prepared or to be prepared by or on behalf of the Company) or other action taken by or on behalf of any person including a Tax Authority indicating that the Company or the Buyer has or may have, or will in the future have, a Tax Liability and in respect of which a Tax Claim may be made;

“Tax Liability”

“TCGA”

“TIOPA”

“TMA”

the meaning ascribed to it in paragraph 2.1 of this part;

the Taxation of Chargeable Gains Act 1992;

the Taxation (International and Other Provisions) Act 2010; and

the Taxes Management Act 1970.

2. **Tax interpretation**

2.1 In this schedule “Tax Liability” means:

2.1.1 a liability to make any actual payment or increased payment of or in respect of, or on account of, Tax;

2.1.2 the loss of any Relief which is reflected or shown as an asset in the Accounts (an “Accounts Relief”); and

2.1.3 the use or set off of any Accounts Relief or any Relief which arises in respect of an Event occurring after Completion where the use or set off of that Relief has the effect of reducing or eliminating any Tax Liability of the Company which would otherwise have given rise to a Tax Claim for which the Seller would have been liable;

provided that:

2.1.4 in any case falling within paragraph 2.1.2 of this part where the Relief lost:

2.1.4.1 is a right to a repayment of Tax, the Tax Liability shall be treated as being equal to the amount of Tax which would have been repaid but for such loss; or

2.1.4.2 is any other Relief, the Tax Liability shall be treated as being an amount equal to the liability of the Company to make an actual payment of Tax which could have been avoided by the use or set off of that Relief had it not been lost (and assuming the Company had sufficient profits to utilise the Relief in full) provided that the Tax Liability shall not be greater than the amount of the Relief lost multiplied by the rate of corporation tax payable by the Company at the date of Completion; and

2.1.5 in any case falling within paragraph 2.1.3 of this part, the Tax Liability shall be treated as being equal to the amount of Tax which has been reduced or eliminated in consequence of the use or set off of the Relief in question.

In interpreting and applying this schedule:

- 2.2.1 references to a part are references to one of parts 1 to 4 of this schedule;
- 2.2.2 references in this schedule to the Company are to the Company and also (unless the context requires otherwise) to each other Group Company;
- 2.2.3 any reference to any Event occurring includes any Event which is deemed to occur for Tax purposes;
- 2.2.4 any reference to income or profits earned, accrued or received or gains earned or received includes income or profits deemed to be earned, accrued or received or gains deemed to be earned or received for any Tax purposes;
- 2.2.5 any reference to any form of Tax or Relief which exists in the United Kingdom includes a reference to any equivalent or substantially equivalent Tax or Relief in any other relevant country or jurisdiction;
- 2.2.6 any reference to an Event occurring "in the ordinary course of the Company's business" in this schedule shall not include:
 - 2.2.6.1 any transaction or arrangement or series of transactions or arrangements which is not entered into on arm's length terms but (in the case of an acquisition of an asset or the receipt of services) only to the extent of the excess (if any) of the consideration actually paid over the consideration deemed to have been paid and (in the case of a disposal of an asset or the supply of services) only to the extent of the excess (if any) of the consideration deemed to have been received over the consideration actually received;
 - 2.2.6.2 any transaction or arrangement or series of transactions or arrangements which involves any company becoming or ceasing to be treated as a member of a group of companies or as becoming or ceasing to be associated or connected with any other person for Tax purposes;
 - 2.2.6.3 anything which involves, or leads directly or indirectly to, the receipt by a Company of any demand in respect of any Tax Liability of, or properly attributable to, another person (other than another Group Company);
 - 2.2.6.4 any transaction or arrangement or series of transactions or arrangements which includes any step or steps having no commercial or business purpose other than the reduction, avoidance or deferral of a Tax Liability; and
 - 2.2.6.5 the sale or disposal by any means or the agreement to sell or dispose by any means of the whole or part of any interest in any capital asset; and

2.2.7 any reference to the last date on which a payment of Tax can be made or to the last date on which the Company is liable to make an actual payment of Tax (and cognate expressions) shall be interpreted as meaning the last date on which a payment in respect of Tax can be made to the appropriate Tax Authority without incurring a liability (contingent or otherwise) to interest or a charge or penalty in respect of late payment of such Tax.

Part 2: Tax Warranties

1. **Payments of Tax**

1.1 The Company:

- 1.1.1 has in all material respects in the last five years duly and punctually paid all Tax which it has become liable to pay;
- 1.1.2 has in all material respects in the last five years duly deducted, withheld or collected for payment (as appropriate) all Tax due to have been deducted, withheld or collected for payment and has accounted for or paid all such Tax to the relevant Tax Authority; and
- 1.1.3 is not, and has not at any time within the last five years been, liable to pay any interest, penalty or surcharge in respect of any unpaid Tax or as a result of a default in respect of any Tax matter or has otherwise been subject to the operation of any penal provision under any enactment relating to Tax.

1.2 The Company is not, nor, so far as the Seller is aware, will become, liable to make to any person (including any Tax Authority) any payment in respect of any liability to Taxation which is primarily or directly chargeable against, or attributable to, any other person (other than another Group Company).

1.3 The Company has not entered into a Managed Payment Plan within the provisions of section 111 of the Finance Act 2009 (paragraph 80 of Schedule 7 to TIOPA) nor into any arrangement with HM Revenue & Customs for the deferred payment of any liability to Taxation.

1.4 The Company is a qualifying company within the meaning given to that term in paragraph 15 of Schedule 46 to the Finance Act 2009.

2. **Tax returns**

All Tax returns which are or have been required to be made or given by the Company in the last five years have been made or given within the requisite periods and were when made and remain in all material respects true and accurate and none of them is the subject of any enquiry, query or dispute with any Tax Authority.

3. **Tax records**

3.1 The Company has in all material respects obtained, maintained and preserved complete, accurate and up to date records as required for all Tax purposes.

3.2 Such records form part of tax accounting arrangements that enable the Tax liabilities of the Company to be calculated accurately in all material respects.

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4. **Tax disputes**
The Company is not, nor has it been at any time within the last five years, involved in any dispute with or investigation, audit or discovery by any Tax Authority or any enquiry into any Tax return nor, so far as the Seller is aware, will any such dispute, investigation, audit, discovery or enquiry arise.
5. **Position since the Accounts Date**
- 5.1 In respect of the period starting immediately after the Accounts Date, the Company has no liabilities for Tax other than:
- 5.1.1 corporation tax payable in respect of normal trading profits;
- 5.1.2 income tax payable pursuant to PAYE and national insurance contributions, in each case, payable in respect of amounts that the Company is contractually obliged to pay to its employees and directors; and
- 5.1.3 VAT on supplies of goods and services made by the Company in the ordinary course of its business.
- 5.2 No accounting period of the Company for corporation tax purposes has ended, and the Company has not made any distribution since the Accounts Date.
- 5.3 No liability to Tax (other than VAT) would arise if the Company were to dispose of an asset acquired since the Accounts Date for a consideration equal to that actually given for the acquisition.
6. **Special Arrangements**
No Tax Authority has agreed to operate any special arrangement (being an arrangement not based on a strict and detailed application of the relevant legislation) in relation to the affairs of the Company, the Company has not taken any action which would or might alter, prejudice or in any way disturb any arrangement or agreement which it has negotiated with any Tax Authority nor will any transaction carried out pursuant to this Agreement have such an effect.
7. **Corporation Tax Instalments**
The Company is liable to pay corporation tax in accordance with the provisions of the Corporation Tax (Instalment Payments) Regulations 1998.
8. **Clearances and consents**
All clearances and consents obtained by the Company from any Tax Authority were based on full and accurate disclosure of all the facts and circumstances material to the decision of the Tax Authority. The Company has complied in all respects with any conditions to which any such consents or clearances are subject.

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9. **Stamp Duty**
- 9.1 All documents in the possession of the Company or to the production of which it is entitled and which attract stamp or transfer duty in the United Kingdom or elsewhere have been properly stamped. The Company does not own any interest in UK land or buildings which is evidenced by an uncompleted contract.
- 9.2 The Disclosure Letter sets out full and accurate details of any chargeable interest (as defined under section 48 of the Finance Act 2003) acquired or held by the Company before Completion in respect of which the Seller is aware, or ought reasonably to be aware, that an additional land transaction return will be required to be filed with a Tax Authority and/or a payment of stamp duty land tax made on or after Completion.
10. **Stamp Taxes — groups**
- The Company has not made any claim for relief or exemption under section 42 Finance Act 1930, section 76 Finance Act 1986, section 151 Finance Act 1995 or Schedule 7 Finance Act 2003 in respect of any interest in UK land or buildings which was transferred or granted to it at any time within the last six years.
11. **VAT**
- 11.1 ECP is the representative member of a VAT group registered for the purposes of VAT under VAT registration number 765 436 989 and its registration is not subject to any conditions imposed by or agreed with HM Revenue & Customs or any other relevant Tax Authority and the Company has complied in all respects with all statutory requirements, orders, provisions, directions or conditions relating to VAT.
- 11.2 All supplies made by the Company in the ordinary course of its business are taxable supplies. Details of any supplies with a value in excess of €5,000 which are not taxable supplies or not made in the course of the business of the Company since the last accounting period are set out in the Disclosure Letter. All VAT paid or payable by the Company is input tax as defined in section 24 of VATA and regulations made under it.
- 11.3 No direction has been given nor will be given by HM Revenue & Customs under Schedule 9A to VATA as a result of which the Company would be treated for the purposes of VAT as a member of a group.
- 11.4 The Company does not own any assets which are capital items subject to the capital goods scheme under Part XV of the VAT Regulations 1995.
- 11.5 The Company has not made any claim for any bad debt relief under section 36 of VATA. So far as the Seller is aware, there are no existing circumstances by virtue of which any refund of VAT obtained or claimed may be required to be repaid.

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- 11.6 The Company:
- 11.6.1 has not agreed any special method of attributing, accounting or otherwise in relation to VAT with HM Revenue & Customs; and
- 11.6.2 does not own any land or buildings (including any interest in or right over any land or buildings) in respect of which it or a relevant associate (within the meaning of paragraph 3 of Schedule 10 to VATA) of it has exercised an option to tax pursuant to paragraph 2 Schedule 10 to VATA.
12. **Jurisdiction**
- 12.1 Each Group Company (other than Euro Car Parts Limited) has, throughout the past five years, been resident in the UK for corporation tax purposes and has not, at any time in the past five years, been treated as resident in any other jurisdiction for the purposes of any double taxation arrangements having effect under section 18 of CTA 2009, section 2 of TIOPA or for any other Tax purpose.
- 12.2 ECP does not hold shares in a company other than Euro Car Parts Limited (registered in Ireland) which is not resident in the UK and which would be a close company if it were resident in the UK in circumstances such that a chargeable gain accruing to the company not resident in the UK could be apportioned to the Company pursuant to section 13 of TCGA.
- 12.3 ECP does not hold, nor has held in the past five years, any interest in a controlled foreign company other than Euro Car Parts Limited (registered in Ireland) within section 747 of ICTA 1988. The Company does not have any material interest in an offshore fund as defined in Part 1 of Schedule 22 to the Finance Act 2009.
- 12.4 No Group Company (other than Euro Car Parts Limited) has, nor within the last five years has had, a permanent establishment outside the UK.
- 12.5 The Company is not an agent or permanent establishment of another company, person, business or enterprise for the purpose of assessing the company, person, business or enterprise to Taxation in the country of residence of the Company.
13. **Capital allowances**
- 13.1 No event has occurred since the Accounts Date (otherwise than in the ordinary course of business) whereby any balancing charge may fall to be made against, or any disposal value may fall to be brought into account, by the Company under CAA (or any other legislation relating to capital allowances) or similar legislation relating to relief for similar capital expenditure in jurisdictions outside the UK.
- 13.2 The Disclosure Letter contains full details of:
- 13.2.1 all capital allowances to which the Company is entitled under Chapter 14 of Part 2 of CAA (Fixtures);

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- 13.2.2 any claim for first-year tax credits within the meaning of Schedule 1A of CAA or for business renovation allowances under Part 3A of CAA; and
- 13.2.3 all expenditure incurred on the provision of or replacement of integral features within the meaning of section 33A of CAA.
14. **Distributions and other payments**
- 14.1 No distribution or deemed distribution, within the meaning of section 1000 or sections 1022-1027 of CTA 2010, has been made (or will be deemed to have been made) by the Company, except dividends shown in their audited accounts, and the Company is not bound to make any such distribution.
- 14.2 The Company has not, within the period of five years preceding Completion, been engaged in, nor been a party to, any of the transactions set out in Chapter 5 of Part 23 of CTA 2010, nor has it made or received a chargeable payment as defined in section 1086 of CTA 2010.
- 14.3 The Company has not received, nor are there any arrangements in place as a result of which the Company will receive, a dividend which is not exempt within the provisions set out in chapters 2 and 3 of Part 9A of CTA 2009.
15. **Loan relationships**
- All interests, discounts and premiums payable by the Company in respect of its loan relationships within the meaning of Chapter 8 of Part 5 of CTA 2009 are eligible to be brought into account by the Company as a debit for the purposes of Part 5 of CTA 2009 at the time and to the extent that such debits are recognised in the statutory accounts of the Company.
16. **Close companies**
- 16.1 The Company is not a close investment-holding company as defined in section 34 of CTA 2010.
- 16.2 No expenses which would be treated as a distribution within section 1064 of CTA 2010 have been incurred by the Company during the last five years.
- 16.3 Any loans or advances made, or agreed to be made, by the Company within sections 455, 459 and 460 of CTA 2010 have been disclosed in the Disclosure Letter. The Company has not released or written off, or agreed to release or write off, the whole or any part of any such loans or advances.
17. **Group relief**
- Except as provided in the Accounts, the Company is not, nor will be, obliged to make or be entitled to receive any payment in pursuance of an agreement as respects amounts surrendered by way of group relief to or by the Company in respect of any period ending on or before Completion.

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18. **Groups of companies**
- 18.1 The Group Companies together comprise a group for the purposes of Part 5 of CTA 2010 and, so far as the Seller is aware, there are no circumstances or arrangements as a result of which the Company will cease to form part of such group.
- 18.2 The Company has not entered into, nor agreed to enter into, an election pursuant to sections 171A or 179A of TCGA, paragraph 16 of Schedule 26 to the Finance Act 2008, or section 792 of CTA 2009 (or paragraph 66 of Schedule 29 to the Finance Act 2002).
- 18.3 Neither the execution nor completion of this Agreement, nor any other event since the Accounts Date, will result in any chargeable asset being deemed to have been disposed of and re-acquired by the Company for Taxation purposes or to the clawback of any relief previously given.
- 18.4 The Company has never been party to any arrangements pursuant to sections 59F-G of TMA (group payment arrangements).
19. **Anti-avoidance**
- 19.1 All transactions or arrangements made between the Company and any associated enterprise within the last five years have been made on fully arm's length terms for the purposes of transfer pricing legislation contained in part 4 TIOPA and previously in Schedule 28AA to ICTA 1988 or the equivalent in any other jurisdiction.
- 19.2 The Company has not been involved in any transaction or series of transactions the sole purpose of which was the avoidance of tax.
20. **Inheritance tax**
- 20.1 The Company has not:
- 20.1.1 made any transfer of value within sections 94 and 202 of Inheritance Tax Act 1984 (" **IHTA 1984** "); or
- 20.1.2 received any value such that liability might arise under section 199 of IHTA 1984; or
- 20.1.3 been a party to associated operations in relation to a transfer of value as defined by section 268 of IHTA 1984.
- 20.2 There is no unsatisfied liability to inheritance tax attached to, or attributable to, the Shares or any asset of the Company. None of them is subject to any Inland Revenue charge as mentioned in section 237 and 238 of IHTA 1984.
- 20.3 No asset owned by the Company, nor the Shares, is liable to be subject to any sale, mortgage or charge by virtue of section 212(1) of IHTA 1984.

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21. **Share Incentives and Employee Benefits**
- 21.1 No share incentive scheme, share option scheme (or individual arrangement), profit sharing scheme or other bonus or incentive scheme or arrangement has been established by the Seller or the Company for the benefit of all or any employees, former employees, directors or former directors of the Company, nor is there any proposal to establish any such scheme, and no employee, former employee, director or former director of the Company owns shares or securities in the Seller or in the Company which may be subject to Tax on disposal under Part 7 of ITEPA or similar legislation of any foreign jurisdiction.
- 21.2 The Disclosure Letter contains details of any benefits provided to employees or former employees in respect of which the Company has been or could following Completion be subject to Tax under Part 7A of ITEPA.
- 21.3 All acquisitions of restricted securities or restricted interests in securities within the meaning of section 423 of ITEPA by employees or officers of the Company since 15 April 2003 have been the subject of a valid election under section 431(1) of ITEPA and all such elections have been retained by the Company.
22. **Tax sharing**
- The Company is not bound by or party to any Taxation indemnity or any Taxation allocation agreement in respect of which claims against the Company would not be time barred.
23. **Intangible assets**
- The Company does not own any intangible fixed assets and goodwill within the meaning of Part 8 of CTA 2009.

1. **Seller's covenants**

1.1 Subject as provided in this schedule, the Seller covenants with the Buyer to pay to the Buyer an amount equal to:

- 1.1.1 any Tax Liability of the Company arising in consequence of or by reference to any of the following:
 - 1.1.1.1 any Event which occurred on or before Completion; or
 - 1.1.1.2 any income or profits which were earned, accrued or received on or before Completion or any gains which were earned or received on or before Completion; or
 - 1.1.1.3 a failure to discharge Tax by any company (for the avoidance of doubt, other than the Company):
 - (i) which was, prior to Completion, a member of a group (as defined for any relevant Tax purpose) of which the Company was, prior to Completion, a member; or
 - (ii) which was, prior to Completion, under the control of any person or persons that directly or indirectly controlled the Company prior to Completion; or
- 1.1.2 any Tax Liability falling under paragraph 2.1.2 or 2.1.3 of the definition of Tax Liability in part 1 of this schedule;
- 1.1.3 any Tax Liability of the Company arising as a consequence of or in connection with the acquisition, holding or disposal of employment-related securities (as defined for the purposes of Part 7 of ITEPA) by the Seller where the acquisition of or right to acquire the shares occurred on or before Completion; or
- 1.1.4 any liability to Class 1 secondary 'employer's' national insurance contributions of the Company arising as a result of or in connection with any payments to the Seller or to any Flowering Shareholder under this Agreement or any Flowering Shareholders SPA, which shall include for the avoidance of doubt any payments in the nature of deferred consideration (whether and without limitation satisfied in cash, shares or loan notes) or by way of loan notes or the redemption of loan notes or the Contingent Consideration; or
- 1.1.5 any Tax Liability of the Company arising as a result of or in connection with the operation of or payments made pursuant to any growth securities ownership plan of the Company before Completion; or
- 1.1.6 any Tax Liability which arises as a result of or in consequence of or in connection with the 2009 Group Reorganisation; or

- 1.1.7 any liability to Class 1 secondary 'employer's' national insurance contributions of the Company arising as a result of or in connection with the acquisition, holding or disposal of shares in the share capital of the Seller that are employment related securities (as defined for the purposes of Part 7 of ITEPA) where the acquisition of the shares occurred on or before Completion.
- 1.2 Subject as provided in this schedule, the Seller covenants with the Buyer to pay to the Buyer an amount equal to all out of pocket costs and expenses reasonably and properly incurred by the Buyer or the Company in connection with any Tax Liability for which the Seller is liable to make a payment under this schedule or where the Buyer successfully defends an action pursuant to this schedule.
- 1.3 Any payment made by the Seller to the Buyer pursuant to this schedule shall, so far as possible, be a reduction in or refund of the consideration payable or paid by the Buyer to the Seller pursuant to this Agreement, to the extent permissible by law.
2. **Buyer's covenants and warranties**
- 2.1 The Buyer warrants to the Seller that it is not entering into this Agreement or any transaction in connection with this Agreement on the assumption that any potential Tax liability (as defined in section 714(4) CTA 2010) of the Company relating to an accounting period ending on or after the Completion Date is unlikely to be met either in part or in full.
- 2.2 The Buyer covenants with the Seller to pay to the Seller an amount equal to any liability or increased liability to Tax of the Seller which arises as a consequence of or by reference to any Relevant Company failing to pay any amount of Tax for which it is liable.
- 2.3 The covenant contained in paragraph 2.2 shall not apply to Tax:
- 2.3.1 to the extent the Buyer could make a claim against the Seller pursuant to this schedule or for a breach of any of the Tax Warranties in respect of that Tax (save where the Buyer has received payment from the Seller in respect of that Tax pursuant to such a claim but the Relevant Company has not paid the Tax to the relevant Tax Authority); or
- 2.3.2 which the Seller has already recovered under any relevant statutory provision (and the Seller shall procure that no such recovery is sought by it to the extent payment is made hereunder).
- 2.4 If the Seller uses a Relief so as to reduce or eliminate a liability to Tax for which the Buyer would otherwise have been liable to make a payment pursuant to paragraph 2.2, the Buyer shall be liable to make a payment to the Seller pursuant to paragraph 2.2 as if that liability to Tax had not been so reduced or eliminated.
- 2.5 Subject as provided in this schedule, the Buyer covenants to the Seller to pay to the Seller an amount equal to all costs or expenses reasonably and properly incurred by the Seller in connection with or in consequence of any liability to Tax or increased liability to Tax for which the Buyer is liable pursuant to paragraph 2.2 or in successfully taking any action under this paragraph 2.

1. **Corresponding benefit**

1.1 Where:

- 1.1.1 subject to paragraph 1.2, a Tax Liability of the Company gives rise to a Relief or any Relief arises as a result of the Event which gave rise to a Tax Liability (including, without limitation, where a Tax Liability arises because a deduction or other Relief assumed to be available in a period or periods prior to Completion is in fact available only in a subsequent period or periods) (a “**Relevant Relief**”); and
 - 1.1.2 the Seller has made or is liable to make a payment to the Buyer in respect of such Tax Liability pursuant to a Tax Claim (including by way of set-off pursuant to Clause 7),
- then, an amount equivalent to the lesser of:
- 1.1.3 the amount of Tax which the Company would have been liable to pay but for the availability of the Relevant Relief; and
 - 1.1.4 the amount paid, or to be paid, by the Seller in respect of the Tax Liability giving rise to the Relevant Relief,

shall first be set off against any payment then due from the Seller, secondly, to the extent there is an excess, be refunded to the Seller to the extent of any payments previously made by the Seller under this Agreement and, thirdly, to the extent of any further excess, be carried forward and set off against any payment becoming due from the Seller under this Agreement.

1.2 A Relief shall not be a Relevant Relief to the extent that:

- 1.2.1 it arises or is increased as a result of any change to the rates of Tax announced after the date of this Agreement; or
- 1.2.2 it arises or is increased as a result of any imposition of new Tax or the introduction of or change in any legislation, applicable law or the published practice of, or concessions made by, any Tax Authority announced or published after the date of this Agreement; or
- 1.2.3 it would not have arisen but for a transaction entered into or other voluntary act on the part of the Company or the Buyer after Completion which is not in the ordinary course of the Company's business, as carried on at the date of this Agreement, is not required by law or is not pursuant to a legally binding obligation entered into before the date of this Agreement; or

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- 1.2.4 it arises as a result of any change after Completion of the bases, methods, policies or practice of taxation or accounting of the Company (including a change in accounting reference date or the period in respect of which accounts are made up) save where such change is required to comply with generally accepted accounting standards or policies which were announced or in force prior to Completion.
- 1.3 The Buyer shall notify the Seller as soon as reasonably practicable after it or the Company becomes aware that a Relevant Relief has arisen.
- 1.4 Any amount which becomes payable pursuant to this paragraph 1 shall be paid three Business Days before the date on which the Company would have been liable to make a payment of Tax but for the Relevant Relief or, in the case of a Relevant Relief consisting of or giving rise to a right of repayment of Tax, within five Business Days of obtaining the repayment.
- 1.5 The Seller shall be entitled to require no later than the later of the second anniversary of the Completion Date and the date on which the 2013 EBITDA is agreed or determined, and if so requested the Buyer shall procure, that the Company's auditors shall (at the Seller's cost) certify the amount of any Relevant Relief and the date payment is due pursuant to paragraph 1.4.
2. **Third party recovery**
- 2.1 If the Seller has paid an amount to the Buyer in respect of a Tax Liability pursuant to a Tax Claim (including by way of set-off pursuant to Clause 7) and the Company or the Buyer has:
- 2.1.1 received a payment or obtained a reimbursement, refund, credit or set-off from any person (other than the Buyer or the Company) in respect of the Tax Liability; or
- 2.1.2 (whether by operation of law, contract or otherwise) a right of reimbursement or refund against any other person or persons (other than the Buyer, the Company or under the Insurance Policy) in respect of the Tax,
- the Buyer shall:
- 2.1.3 notify the Seller as soon as reasonably practicable after having received any such amount referred to in paragraph 2.1.1 or becoming aware of any right as referred to in paragraph 2.1.2; and
- 2.1.4 in the case of a right of reimbursement or refund, if requested by the Seller, procure that the Company shall (at the Seller's reasonable cost) take all appropriate steps to enforce the right, keeping the Seller fully informed of any material progress.

2.2 Where paragraph 2.1 of this part applies and the Buyer or the Company has received or receives an amount from a third party, an amount equal to the lesser of:

2.2.1 the amount paid by the Seller pursuant to a Tax Claim in respect of the Tax Liability in question; and

2.2.2 the amount received by the Buyer or the Company from the third party,

shall first be set off against any payment then due from the Seller under this Agreement, secondly, to the extent there is an excess, be refunded to the Seller to the extent of any payments previously made by the Seller under this Agreement (such refund to be paid within five Business Days following the date on which the Buyer or the Company receives the payment from the third party) and, thirdly, to the extent of any further excess, be carried forward and set off against any payment becoming due from the Seller under this Agreement.

3. **Due date for payment**

3.1 Where the Seller becomes liable to make any payment pursuant to a Tax Claim, the due date for the making of the payment shall be:

3.1.1 where the payment relates to a liability of the Company to make an actual payment of Tax or a payment in respect of, or on account of, Tax, the day which is the later of three Business Days prior to the last date on which that payment of Tax can be made to the relevant Tax Authority (after taking into account any postponement of the due date for payment which is obtained) and five Business Days after service of a notice of the Tax Claim on the Seller by the Buyer;

3.1.2 where the payment relates to the loss of a Relief which would have operated as a deduction from gross income, profits or gains, the day which is the later of three Business Days prior to the last date on which the Company is liable to make the first actual payment of Tax to the relevant Tax Authority which could have been avoided by the use or set off of that Relief had it not been lost and five Business Days after service of a notice of the Tax Claim on the Seller by the Buyer;

3.1.3 where the payment relates to the use or set off of a Relief, the day which is the later of three Business Days prior to the last date on which the Company would have been liable to make a payment of Tax to the relevant Tax Authority but for such use or set off and five Business Days after service of a notice of the Tax Claim on the Seller by the Buyer; and

3.1.4 in any other case, the date falling five Business Days after service of a notice of the Tax Claim on the Seller by the Buyer.

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4. **Conduct of Tax Demands**
- 4.1 If any Tax Demand is received by or comes to the notice of the Buyer or the Company the Buyer shall, as soon as reasonably practicable (and, in any event within ten Business Days of the Tax Demand coming to its or the Company's attention), give or procure to be given to the Seller written notice of the Tax Demand, provided that the giving of notice is not a condition precedent to the Seller's liability under this schedule or for a breach of any of the Tax Warranties.
- 4.2 If so requested in writing by the Seller, the Seller shall be entitled to take over the conduct of all proceedings relating to the Tax Demand in question and, if necessary, the Buyer shall take, or shall procure that the Company takes, such action and gives such information and assistance in connection with the affairs of the Company as the Seller may reasonably request to dispute, resist, appeal or compromise the Tax Liability or to postpone (so far as legally possible) the payment of the Tax provided that and the Seller hereby agrees to indemnify the Buyer and the Company in respect of any reasonable costs and expenses and additional Tax it may incur as a result of any such action, information and assistance:
- 4.2.1 the Seller shall keep the Buyer and the Company informed as to the progress and consequences of such action where the Seller becomes directly aware of any such progress or consequences;
- 4.2.2 no material communication (written or otherwise) pertaining to the Tax Demand shall be sent or, communicated otherwise to the relevant Tax Authority without having first been approved by the Buyer (such approval not to be unreasonably withheld or delayed); and
- 4.2.3 neither the Buyer nor the Company shall be required to make a formal appeal to any tribunal or court unless the Seller, at its expense, obtains an opinion from tax counsel of at least ten years standing with relevant experience that the appeal has a reasonable prospect of success.
- 4.3 The Buyer or the Company shall, without reference to the Seller, be entitled to admit, compromise, settle, discharge or otherwise deal with a Tax Demand on such terms as it may, in its absolute discretion, think fit and without prejudice to any right or remedy under this schedule or this Agreement:
- 4.3.1 if the Seller has not made the request referred to in paragraph 4.2 by the earlier of the following dates:
- 4.3.1.1 the date being 25 Business Days after the date on which notice of the Tax Demand, served pursuant to paragraph 4.1, is received by the Seller; and
- 4.3.1.2 the date being five Business Days prior to the last date on which an appeal may be made against the Tax Liability to which the Tax Demand relates or, in the event that this date falls less than ten

Business Days after the Seller has received notice of the Tax Demand, then the date ten Business Days after the Seller has received notice of the Tax Demand; or

- 4.3.2 if written notice is served on the Company or the Buyer by the Seller to the effect that they consider the Tax Demand should no longer be resisted; or
- 4.3.3 upon the expiry of any period prescribed by applicable legislation for the making of an appeal against either the Tax Demand in question or the decision of any court or tribunal in respect of any such Tax Demand, as the case may be; or
- 4.3.4 if a Tax Authority alleges in writing that the Seller (or the Company before Completion) has been fraudulent in respect of the Tax Liability which is the subject of the Tax Demand.

5. **Filing of tax returns**

- 5.1 The Seller (or its duly authorised agents) shall, at the expense of the Company, prepare the Company's corporation tax returns for accounting periods ended on or prior to Completion ("Relevant Returns"), to the extent they have not been prepared before Completion, and deal with all matters and correspondence relating thereto and the Buyer shall procure that the Company shall provide it with such assistance (including affording the Seller (and its duly authorised agents) access to books, accounts and records) as is reasonable and necessary for the Relevant Returns to be prepared and for the Seller to deal with such all matters and correspondence.
- 5.2 All Relevant Returns shall be submitted in draft form to the Buyer (or its duly authorised agents) for comment at least 20 Business Days before it is due to be submitted to the Tax Authority. The Buyer (or its duly authorised agents) shall comment within ten Business Days of such submission and the Seller shall not unreasonably refuse to adopt all such reasonable comments. The Buyer shall procure that the Company shall cause the finalised Relevant Returns to be authorised, signed and submitted to the appropriate Tax Authority promptly following receipt of the same from the Seller provided that the Relevant Returns are true and accurate in all material respects. No material communication (written or otherwise) pertaining to the Relevant Returns shall be sent (or otherwise communicated) to a Tax Authority without first having been approved by the Buyer (such approval not to be unreasonably withheld or delayed).
- 5.3 The Buyer shall procure that the Company makes or gives such claims, elections, surrenders and consents in relation to Tax for all accounting periods of the Company ended on or prior to Completion as the Seller requests as soon as reasonably practicable following any such request (provided done within the time limits required by law) and generally takes any reasonable action as may be necessary to give effect to such claims, elections, surrenders or consents.
- 5.4 The Buyer (or its duly authorised agents) shall prepare the Company's corporation tax return for the accounting period in which Completion falls ("Straddle Return") and deal with all matters and correspondence relating thereto (including, for the avoidance of

doubt, the calculation of any corporation tax instalments). The Straddle Return shall be submitted in draft form to the Seller, or its duly authorised agents, for comment at least 20 Business Days before it is due to be submitted to the Tax Authority. The Seller (or its duly authorised agents) shall comment within ten Business Days of such submission and the Buyer shall not unreasonably refuse to adopt all such reasonable comments (so far as they relate to the period or a Tax matter prior to Completion). The Buyer shall procure that the Company shall cause the finalised Straddle Return to be authorised, signed and submitted to the appropriate Tax Authority without amendment (or with such amendments as the Seller shall agree, such agreement not to be unreasonably withheld or delayed).

5.5 No material communication (written or otherwise) pertaining to the Straddle Return (so far as it relates to the period or a Tax matter prior to Completion and including, for the avoidance of doubt, the calculation of any corporation tax instalment) shall be sent (or otherwise communicated) to a Tax Authority without first having been approved by the Seller (such approval not to be unreasonably withheld or delayed). The Buyer shall afford the Seller (or its duly authorised agents) such access to their books, accounts and records and provide such information as they may reasonably require to enable the Seller to properly review, comment and approve the Straddle Return or communication relating thereto.

6. **Exclusions and limitations**

6.1 For the avoidance of doubt, the provisions of Schedule 5 which are expressed to apply to a Tax Claim shall apply to this Schedule to the extent set out therein

6.2 The Seller shall not be liable in respect of any Tax Claim unless written notice of such claim is given to the Seller prior to the expiry of the period of ten Business Days following the date which is the later of the second anniversary of the Completion Date and the date on which the 2013 EBITDA is agreed or determined.

6.3 The Seller shall not be liable in respect of any Tax Claim in respect of any Tax Liability (or in respect of any costs or expenses relating thereto (and references in this paragraph 6.3 to Tax Liability shall be deemed to include a reference to costs or expenses relating to the Tax Liability)) to the extent that:

6.3.1 provision or reserve for such Tax Liability was included in the Accounts (excluding any provision or reserve for (i) deferred taxation, and (ii) corporation tax (as taken into account in clause 4.7)); or

6.3.2 such Tax Liability (excluding any Tax Liability in respect of corporation tax (as taken into account in clause 4.7)) was paid or discharged on or before Completion and such discharge or payment was recognised or taken into account in the Accounts; or

6.3.3 such Tax Liability (excluding any Tax Liability in respect of corporation tax (as taken into account in clause 4.7)) arises pursuant to an Event occurring, or in respect of income, profits or gains earned, accrued or received, in the ordinary course of the Company's business, in respect of the period after the Accounts Date and on or before Completion; or

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- 6.3.4 such Tax Liability is Actual Tax Paid (as defined in clause 4.7) or the Seller's Estimated CT Liability as adjusted by any Shortfall or Excess (as those terms are defined in clause 4.7);
- 6.3.5 it has been discharged or made good without cost or loss to the Buyer; or
- 6.3.6 it arises or is increased as a result of any increase in the rates of Tax announced after the date of this Agreement; or
- 6.3.7 it arises or is increased as a result of any imposition of new Tax or the introduction of or change in any legislation, applicable law or the published practice of, or concessions made by, any Tax Authority announced or published after the date of this Agreement; or
- 6.3.8 it would not have arisen but for a transaction entered into or other voluntary act on the part of the Company or the Buyer after Completion which is not in the ordinary course of the Company's business, as carried on at the date of this Agreement, is not required by law or is not pursuant to a legally binding obligation entered into before the date of this Agreement; or
- 6.3.9 it arises or is increased by virtue of the failure or omission by the Company or the Buyer to make any claim, election, surrender or disclaimer or give any notice or consent or do any other thing after Completion (otherwise than at the written request of the Seller), the making, giving or doing of which was taken into account or assumed in computing the Seller's Estimated CT Liability (as defined in clause 4.7) and which has been notified to the Buyer in writing; or
- 6.3.10 such Tax Liability would not have arisen but for some Event occurring at the written request, or with the prior written approval, of the Buyer or its representatives other than the entering into this Agreement or any Flowering Shareholder SPA; or
- 6.3.11 recovery has already been made in respect of the Tax Liability by the Buyer or the Company under the Tax Warranties, the Tax Covenant, any other provision of this Agreement or under any statutory provision imposing liability on the Seller or any other person for tax primarily chargeable against the Company; or
- 6.3.12 it arises as a result of any change after Completion of the bases, methods, policies or practice of taxation or accounting of the Company (including a change in accounting reference date or the period in respect of which accounts are made up) save where such change is required to comply with generally accepted accounting standards or policies which were announced or in force prior to Completion; or

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- 6.3.13 it constitutes interest, penalties, a fine or a charge arising from a failure to pay Tax to a Tax Authority promptly after the Seller has made a payment of an amount to the Buyer in respect of that Tax Liability pursuant to a Tax Claim; or
- 6.3.14 it arises or is increased as a consequence of any claim, election, surrender, disclaimer, withdrawal or amendment made or notice or consent given after Completion by the Buyer, the Company or any member of the Buyer's Group under the provisions of any enactment or regulation relating to Tax other than any claim, election, surrender, disclaimer, withdrawal or amendment, notice or consent assumed to have been made, given or done in computing the Seller's Estimated CT Liability (as defined in clause 4.7); or
- 6.3.15 it would not have arisen but for a cessation, or change in the nature or conduct, in each case after Completion, of any trade or business carried on by the Company at Completion; or
- 6.3.16 any Seller's Relief is available (or would have been so available had it not already been used to mitigate one or more Tax Liabilities of Company which arose in relation to a period after Completion and in respect of which the Seller would have no liability under this schedule or for breach of any of the Tax Warranties) and the Seller does not prevent the utilisation of that Seller's Relief to reduce or eliminate such Tax Liability and for these purposes it shall be assumed that the Company has made all such claims and elections and done all other things required for the Relief to be so available; or
- 6.3.17 it arises or is increased by virtue of the Company's average rate of corporation tax increasing as a result of becoming a member of the Buyer's Group; or
- 6.3.18 it arises or is increased as a consequence of any failure by the Buyer to comply with any of its obligations under this schedule; or
- 6.3.19 it is in respect of stamp duty or stamp duty reserve tax payable on the transfer or agreement to transfer the Shares pursuant to this Agreement; or
- 6.3.20 it is in respect of stamp duty other than stamp duty which the Company is obliged to pay in order to prove its title to any property, to have ownership of any property entered in any register or to advance any documentation as evidence in court; or
- 6.3.21 it is in respect of any Tax Liability which arises in connection with any election made by Leslie Elliot to treat VDS or ADS as a partnership for US Tax purposes; or
- 6.3.22 it is in respect of Class 1 secondary 'employer's' national insurance contributions payable as a result of the payment of any bonuses to the Bonus Recipients for the calendar year 2011.

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- 6.4 Save in respect of a claim for breach of the Tax Warranties, the Seller shall only be liable for 51% of any Tax Claim which is made in connection with a liability of VDS and ADS.
- 6.5 None of the exclusions or limitations in this paragraph shall apply in the event of fraud of any Group Company or any of its directors or agents, in each case, before Completion.
- 6.6 The exclusions and limitations in paragraphs 6.3.6, 6.3.7, 6.3.10, 6.3.12, 6.3.15 and 6.3.17 shall not apply to a Tax Claim in respect of a matter referred to in paragraphs 1.1.3, 1.1.5, 1.1.6 or 1.1.7 of part 3.
7. **Insurance Policy**
- Notwithstanding any other provision of this part 4, in the event that the Buyer recovers under the Insurance Policy in respect of any claim for breach of the Tax Warranties or for any Tax Covenant Claim, the provisions of paragraph 2 (third party recovery), 4 (conduct of Tax Demands) and 6.2 (time limit) will not apply in respect of any such claim but in the case of paragraph 6.2 this exclusion only applies to the extent of such recovery.

SCHEDULE 4

Not used

SCHEDULE 5

Limitations on Seller's Liability

1. **General**
Nothing in this schedule shall limit or exclude any liability of the Seller for fraud or intentional misrepresentation.
2. **Financial Limits**
 - 2.1 The Seller shall not be liable in respect of any General Warranty Claim or any Tax Claim or any Indemnity Claim unless the Seller would, but for this paragraph 2.1, have a liability in respect of that General Warranty Claim or Tax Claim or Indemnity Claim, as the case may be, in excess of £1,000, excluding any liability for costs and interest. Where the same facts or circumstances give rise to more than one Claim, such Claims shall be aggregated for the purpose of determining whether such £1,000 sum has been exceeded.
 - 2.2 The Seller shall not be liable in respect of any General Warranty Claim, Tax Claim (other than an ADS/VDS Tax Covenant Claim) or Indemnity Claim unless the Seller has an aggregate liability in respect of all Warranty Claims, Tax Claims and Indemnity Claims (excluding all Warranty Claims, Tax Claims and Indemnity Claims for which the Seller has no liability by reason of paragraph 2.1 and excluding any ADS/VDS Tax Covenant Claims) in excess of £1,200,000, excluding any liability for costs and interest (in which event, the Seller shall be liable for the full amount (including, in addition, any liability for reasonable costs and interest) and not merely the excess over such amount).
 - 2.3 The aggregate liability of the Seller for all General Warranty Claims, Tax Claims and Indemnity Claims shall not exceed the total of:
 - 2.3.1 the sum of all and any amounts payable by LKQ under the Series A Loan Notes held by the Seller and the Flowering Shareholders less the amount of any sums that the Buyer has set-off against and deducted from the Adjustments to be paid to the Seller pursuant to clause 7;
 - 2.3.2 the Contingent Consideration payable to the Seller and to the Flowering Shareholders including the sum of all and any amounts payable pursuant to the 2012 Earn-out Loan Notes and the 2013 Earn-out Loan Notes; and
 - 2.3.3 the proceeds of the Insurance Policy.
- 2.4 Subject to clause 7 and paragraph 2.7, the Buyer agrees that any liability of the Seller for all Warranty Claims, Tax Claims and Indemnity Claims shall be satisfied as follows:
 - 2.4.1 first by cancellation by the Buyer of Series A Loan Notes held by the Seller and, in respect of General Warranty Claims, Tax Claims and Indemnity Claims only, by the cancellation by the Buyer of Series A Loan Notes held by the Flowering Shareholders up to an amount which is equal to the Insurance Excess;

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- 2.4.2 secondly, by the Buyer seeking to recover under the Insurance Policy up to an amount equal to the amount of the Insurance Cap;
- 2.4.3 subject to paragraph 2.7, thirdly and only to the extent that the aggregate amount of any Warranty Claims, Tax Claims and Indemnity Claims is greater than the Insurance Excess plus the amount actually recovered by the Buyer under the Insurance Policy, by set-off against the amount of Contingent Consideration payable to the Seller pursuant to clause 5 and in respect of General Warranty Claims, Tax Claims and Indemnity Claims only, against the amount of Contingent Consideration payable to the Flowering Shareholders and/ or the 2012 Earn-out Loan Notes and/ or the 2013 Earn-out Loan Notes; and
- 2.4.4 subject to paragraph 2.7, fourthly and only to the extent that the aggregate amount of any Warranty Claims, Tax Claims and Indemnity Claims is greater than the sum of the Insurance Excess plus the amount actually recovered by the Buyer under the Insurance Policy plus the aggregate amount set off by the Buyer pursuant to paragraph 2.4.3 in accordance with this Agreement, by the cancellation by the Buyer of any outstanding Series A Loan Notes held by the Seller and in respect of General Warranty Claims, Tax Claims and Indemnity Claims only, of any outstanding Series A Loan Notes held by the Flowering Shareholders.
- 2.5 Under no circumstances shall the Seller be liable to make any payment to the Buyer in respect of General Warranty Claims or Tax Claims or Indemnity Claims except by way of set off against amounts payable under the Loan Notes, the Adjustments and/or the Contingent Consideration under clause 7 and paragraphs 2.4.1, 2.4.3, and 2.4.4. The Seller shall be liable to make payment to the Buyer in respect of any Claims in respect of the Title Warranties which are not satisfied in full pursuant to paragraph 2.4 save that the aggregate liability of the Seller in respect of all Warranty Claims and Tax Claims and Indemnity Claims shall not exceed the aggregate of (i) the total consideration payable under this Agreement and the Flowering Shareholders SPAs and (ii) the amount of the Draco Loan.
- 2.6 Any cancellation of Loan Notes and/ or set off against amounts payable under the Loan Notes and/ or the Contingent Consideration pursuant to this Agreement, shall be pro-rata to:
- 2.6.1 in the case of Series A Loan Notes, the amount of such Loan Notes issued to the Seller and each Flowering Shareholder; and
- 2.6.2 in the case of the Contingent Consideration, the amount of Contingent Consideration due to the Seller and each Flowering Shareholder including pursuant to the 2012 Earn-out Loan Notes and the 2013 Earn-out Loan Notes,
- in each case save in relation to Claims in respect of the Title Warranties in which case the set off shall be against the Series A Loan Notes issued to the Seller or the Contingent Consideration payable to the Seller only.

- 2.7 Notwithstanding the provisions of paragraph 2.4, in the event that the Buyer would be entitled to deduct the amount of any Claim from any amount of Contingent Consideration prior to the time when the amount of such Contingent Consideration has been agreed or determined pursuant to clause 5:
- 2.7.1 the Buyer may set off against the relevant amount of Series A Loan Notes up to the full amount of the Series A Loan Notes; and
- 2.7.2 in the event that the amount of amount of any General Warranty Claims and Tax Claims exceeds the amount of the Series A Loan Notes, the excess shall be set-off against the Contingent Consideration and the 2012 Earn-out Loan Notes and the 2013 Earn-out Loan Notes.
- 2.8 For the avoidance of doubt, the Seller and Flowering Shareholders shall not have any liability to the Buyer (by way of set off against Loan Notes or Contingent Consideration or otherwise) howsoever in respect any Warranty Claim, Tax Claim or Indemnity Claim if and to the extent that the Buyer recovers under the Insurance Policy in respect of such claim.
- 2.9 For the avoidance of doubt the Flowering Shareholders shall not have any liability to the Buyer (by way of set off against Loan Notes, Contingent Consideration or otherwise) in respect of any Warranty Claim under the Title Warranties.
3. **Time Limits**
- 3.1 The Seller shall not be liable in respect of any Warranty Claim or Indemnity Claim unless notice of that Warranty Claim or Indemnity Claim (as the case may be) specifying the matter in reasonable detail, the Warranties or indemnity which have or which have likely to have been breached and, to the extent practicable, its best estimate of the amount of the Warranty Claim or Indemnity Claim or likely claim is given to the Seller on or before the later of the second anniversary of the Completion Date and the date on which the 2013 EBITDA is agreed or determined (the “**Cut-off Date**”).
- 3.2 The Seller shall not be liable in respect of any Warranty Claim or Indemnity Claim if, on or before the date falling 20 Business Days after the date on which notice of that Warranty Claim is received by the Seller, the Seller has remedied the relevant breach or prevented the Buyer from suffering any loss in respect of the subject matter of that Warranty Claim or Indemnity Claim or caused any loss so suffered by the Buyer to be made good. The Buyer shall comply with all reasonable requests made by the Seller during that period for the purposes of so remedying any such breach or preventing any such loss.
- 3.3 The Seller shall not be liable in respect of any Warranty Claim, Tax Claim or Indemnity Claim (if not previously satisfied, settled or withdrawn) unless legal proceedings have been issued and served on the Seller on or before the date falling nine months after the date on which notice of that Warranty Claim, Tax Claim or Indemnity Claim was served under paragraph 3.1 or paragraph 6.2 of part 4 of schedule 3 (as the case may be) save:-
- 3.3.1 in the case of a Warranty Claim, Tax Claim or Indemnity Claim based upon a liability which is contingent or otherwise not capable of being quantified, in which case such nine month period shall commence on the date that the contingent liability becomes an actual liability; or

- 3.3.2 in the case of a Warranty Claim, Tax Claim or Indemnity Claim where a Group Company or the Buyer has made a corresponding claim against an insurer (other than in respect of the Insurance Policy) or has a corresponding entitlement to recovery from some other person, in which case such nine month period shall commence on the date that the corresponding claim or entitlement is finally settled or finally determined; or
- 3.3.3 in the case of any Warranty Claim, Tax Claim or Indemnity Claim which, under any other provision of this Agreement, a Group Company or the Buyer has taken any action to avoid, dispute, resist, compromise, defend or appeal any matter related to the Warranty Claim, Tax Claim or Indemnity Claim in which case such nine month period shall commence on the date that such action is concluded or terminated,
- provided in each case that, the Seller shall not be liable in respect of any Warranty Claim, Tax Claim or Indemnity Claim if notice has not been served and/or legal proceedings issued before 30 September 2014.
4. **Exclusion of liability: general**
- 4.1 The Seller shall not be liable in respect of a Warranty Claim if at the time of entry by the Buyer into this Agreement any of Walter Hanley, Robert Deitch and Vaughn Hooks had actual knowledge of the matter giving rise to such Warranty Claim and he appreciated or ought reasonably to have appreciated that it would entitle the Buyer after Completion to make a claim for breach of such Warranty. For the purposes of this clause:
- 4.1.1 neither Walter Hanley nor Robert Deitch nor Vaughn Hooks shall be deemed to have actual knowledge of any matter solely by virtue of the fact that he had access to or viewed any particular document in the Data Room; or
- 4.1.2 Walter Hanley, Robert Deitch and Vaughn Hooks shall be deemed not to have actual knowledge of any document included in the Data Room after 5.00pm on 28 September 2011 or any matter included therein save in respect of documents that are specifically referred to by document number in disclosures made under the heading "Specific Disclosures" in the Disclosure Letter sufficiently to enable the Buyer to identify and understand the nature and scope of the matter disclosed and to assess its likely impact.
- 4.2 The Seller shall not be liable in respect of a Warranty Claim to the extent that such claim relates to any matter specifically provided for in the Accounts.
- 4.3 The Seller shall not be liable in respect of a Warranty Claim to the extent that the matter giving rise to the Warranty Claim results from:
- 4.3.1 any act or omission before Completion carried out or omitted at the express written request of the Buyer or any other member of the Buyer's Group; or

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- 4.3.2 any breach by the Buyer of its obligations under this Agreement; or
 - 4.3.3 any change after Completion in the accounting policies or practices used in preparing the Accounts otherwise than to comply with UK GAAP or applicable law in effect as at Completion or in the accounting reference date of any Group Company; or
 - 4.3.4 any reorganisation of the Buyer's Group after Completion or change after Completion in the ownership of the Company; or
 - 4.3.5 any act, event, occurrence or omission after the date of this Agreement compelled by law, or from the enactment, amendment or change in the interpretation after that date, of any statute, regulation or practice of any governmental, regulatory or other body, including a Tax Authority, whether or not having retrospective effect, or any change after the date of this Agreement in the rates of Taxation.
- 4.4 The Seller shall not be liable in respect of a Warranty Claim to the extent that the matter giving rise to the Warranty Claim would not have arisen but for any act or omission on or after Completion carried out or omitted by or on behalf of the Buyer or any member of the Buyer's Group (including any Group Company) otherwise than in the ordinary course of business provided that such act or omission was not carried out by or under direction of the Seller or as a necessary consequence of any act or omission before Completion of the Seller or a Group Company or was required as a consequence of any law, regulation or statute in effect as at Completion or contractual obligation entered into prior to Completion by the Seller or a Group Company.
- 4.5 The Seller shall not be liable in respect of any Warranty Claim to the extent that the matter giving rise to the Warranty Claim constitutes a contingent liability of any Group Company or relates to a liability which is not capable of being quantified until such liability becomes an actual liability of that Group Company or becomes capable of being quantified. This paragraph shall not relieve the Buyer from any obligation to give notice under paragraph 3.1 in respect of any matter which constitutes a contingent liability on the Buyer or relates to a liability which is not capable of being quantified.
5. **Recovery from third parties**
- 5.1 Subject to the Buyer's obligations under the terms of the Insurance Policy, if the Buyer or a Group Company becomes aware of any matter which would or is likely to give rise to a Warranty Claim or Indemnity Claim and the Buyer or a Group Company has or subsequently acquires a right to make recovery or claim indemnity from any third party (including under any policy of insurance other than the Insurance Policy) in relation to that matter, then the Buyer shall promptly notify the Seller of the right, and shall (without prejudice to its ability to claim against the Seller) take reasonable steps to seek recovery or claim indemnity from such third party.
- 5.2 If any sum is paid by or on behalf of the Seller or the Flowering Shareholders in satisfaction of a Warranty Claim or Indemnity Claim, and the Buyer or a Group Company subsequently makes recovery from any third party (including under any policy of

insurance other than the Insurance Policy) in respect of the matter giving rise to that Warranty Claim or Indemnity Claim, subject to the terms of the Insurance Policy, the Buyer shall promptly repay to the Seller's Solicitors (on behalf of the Seller):

- 5.2.1 an amount equal to the sum recovered from the third party less any reasonable out-of-pocket costs and expenses incurred in recovering the same, the amount of any increase in the premium payable for the relevant insurance in respect of the next two following annual insurance periods and less any Tax suffered on the receipt; or
- 5.2.2 if the figure resulting under paragraph 5.2.1 above is greater than the amount paid by the Seller to the Buyer in respect of the Claim, such lesser amount as shall have been so paid by the Seller.

5.3 The Buyer shall:

- 5.3.1 consult with the Seller as soon as reasonably practicable with regard to any actual or proposed developments relating to the matter in question and provide the Seller with copies of all correspondence and documents in relation to that matter and (on request from time to time) with a status report with regard to the matter; and
- 5.3.2 where reasonably practicable, not admit liability in respect of or settle or compromise the matter in question (or offer to do so) without prior consultation with the Seller.

6. **Conduct of third party claims**

6.1 Where the Buyer gives the Seller notice under paragraph 3.1 or where any such matter arises and notice has not been given, the Buyer shall:

- 6.1.1 consult with the Seller as soon as reasonably practicable with regard to any actual or proposed developments relating to the matter in question and provide the Seller with copies of all correspondence and documents in relation to that matter;
- 6.1.2 where practicable, not admit liability in respect of or settle or compromise the matter in question (or offer to do so) without prior consultation with the Seller;
- 6.1.3 consult with the Seller as to any ways in which the matter might be avoided, disputed, resisted, mitigated, settled, compromised, defended or appealed; and
- 6.1.4 take such action, at the written request of the Seller, as the Seller may reasonably require, to avoid, dispute, resist, mitigate, settle, compromise, defend or appeal the third party claim.

provided that the provisions of paragraph 6 shall not apply:

- 6.1.4.1 if the relevant actions or steps required by the Seller would in the opinion of the Buyer (acting reasonably) materially prejudice the business and/or goodwill of any of the Group Companies or the ability of the Buyer's Group to conduct the business of the Company or where the subject matter of the relevant third party claim involves a material customer or supplier of the business of the Group Companies;
- 6.1.4.2 to any matters which would require the Buyer or any Group Company to breach a contractual or legal obligation existing at the date hereof or waive any legal privilege;
- 6.1.4.3 if the relevant actions or steps required by the Seller would conflict with the Buyer's obligations under the terms of the Insurance Policy;
and further provided that
- 6.1.4.3.1 the Seller shall in advance provide the Buyer with such funds as shall be reasonably necessary to meet all costs and expenses incurred as a result of the request by the Seller; and
- 6.1.4.3.2 the Seller shall indemnify and keep indemnified the Buyer against all Losses suffered or incurred as a result of any action taken in accordance with this paragraph 6.

6.2 Subject to the Buyer's obligations under the terms of the Insurance Policy, if there is any dispute between the Seller and the Buyer as to whether liability in respect of any third party claim should be admitted or whether that claim should be settled or compromised, liability shall not be admitted, and that claim shall not be settled or comprised, other than in accordance with the provisions of this paragraph. Any such dispute shall be referred to leading counsel agreed between the Seller and the Buyer or in default of agreement on or before the date falling five Business Days after the date on which an individual is first proposed for the purpose by either the Seller or the Buyer by the President for the time being of the Law Society of England and Wales on the application of either the Seller or the Buyer. Any individual to whom a dispute is so referred shall be instructed in writing to give a written opinion, as soon as is reasonably practicable, as to which of the courses of conduct proposed by the Buyer and by the Seller is most likely to result in the third party claim being agreed, settled or compromised at the least cost to the Seller but bearing in mind the matters set out in paragraphs 6.1.4.1, 6.1.4.2. The decision of counsel (who shall act as expert and not as arbitrator) shall be final and binding on the Buyer and the Seller for all purposes. Counsel's fees and expenses shall be borne by the Seller and the Buyer as counsel may determine in his sole discretion or, if no such determination is made by the Seller and the Buyer in equal shares. The parties shall then implement counsel's decision as soon as is reasonably practicable.

6.3 References in this paragraph 6 to any claim, action or demand against the Buyer or a Group Company include the assertion of any right to the same, including a right of termination.

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7. **Remedies**
- 7.1 The Buyer irrevocably and unconditionally waives any right it may have to rescind this Agreement for any misrepresentation, whether or not contained in this Agreement, and whether or not relating to any Tax matter, or to terminate this Agreement for any other reason other than in accordance with its express terms.
- 7.2 The Buyer irrevocably and unconditionally waives any right it may have to sue the Seller or any of the Seller's advisers for misrepresentation, whether in equity, tort or under the Misrepresentation Act 1967, in respect of any misrepresentation, whether or not contained in this Agreement. The Buyer's sole remedy in respect of any such misrepresentation shall be an action for breach of contract under the terms of this Agreement if and to the extent that the misrepresentation in question constitutes a breach of the Warranties (including the Tax Warranties).
- 7.3 Without limiting clause 26.4 of this Agreement, nothing in this paragraph 7 shall limit the Seller's liability for fraudulent misrepresentation or the remedies available to the Buyer for fraudulent misrepresentation.
8. **General**
- The Buyer shall not be entitled to recover any loss or amount more than once under this Agreement. For this purpose, recovery by the Buyer or any Group Company shall be deemed to be a recovery by each of them.
9. **Insurance Policy**
- Notwithstanding any other provision of this schedule 5, in the event that the Buyer recovers under the Insurance Policy in respect of any Claim, the provisions of paragraphs 3, 5, 6 shall not apply in respect of such Claim but in the case of paragraph 3 this exclusion only applies to the extent of such recovery.

SCHEDULE 6

The Earn-out Periods

1. Save as provided in paragraph 3 of this schedule, during the Earn-out Periods, the Buyer shall:
- 1.1 ensure that Sukhpal Singh Ahluwalia in his capacity as managing director of ECP has sole responsibility for the day-to-day running and management of the operations of ECP and its subsidiaries, to the extent consistent with the Business Plan;
- 1.2 ensure that ECP shall not terminate the employment of Sukhpal Singh Ahluwalia other than for Cause. For the purposes of this schedule 6 "Cause" shall mean termination in accordance with clause 17 of the Employment Agreement between ECP and Sukhpal Singh Ahluwalia;
- 1.3 ensure that no member of the Buyer's Group in any other way competes with any Group Company as regards its business as carried on at Completion;
- 1.4 ensure that the resources reasonably requested by any Group Company (including but not limited to financial, marketing, production, sales and personnel resources) to enable it to maximise its profits in accordance with the Business Plan are promptly made available to it;
- 1.5 not undertake any event which would cause any Group Company to cease to be a subsidiary of the Buyer or any other Group Company, to the extent that such event would be effected primarily to reduce the 2012 EBITDA or the 2013 EBITDA;
- 1.6 ensure that no officer, employee or consultant of any Group Company (other than any officer, employee or consultant appointed by the Guarantor) as at the Completion Date is seconded to or required to provide services to the Buyer's Group or (in any material respects) to any other Group Company other than on an arm's length financial basis;
- 1.7 ensure that no Group Company shall enter into any agreement or transaction with a member of the Buyer's Group which is not at arms' length or on normal commercial terms or is otherwise than in the ordinary course of business or which provides for any payment for goods or services at any rate other than one which might reasonably be charged by an independent third party;
- 1.8 conduct the business of the Group Companies in accordance with and otherwise adhere to the Business Plan in all material respects;
- 1.9 ensure that any alteration to the terms and conditions of employment of the directors of the Group Company or any alteration to their pay or any agreement to pay any bonus or commission to any of their directors (other than as already set out in this Agreement or their existing employment contracts) shall be determined in good faith;
- 1.10 not change the accounting reference date of any Group Company;

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- 1.11 not take any steps or allow any steps to be taken for the winding-up, receivership, administrative receivership or administration of any Group Company;
- 1.12 not change or allow to be changed the name of ECP or its trading name, save that it shall be designated ECP, an LKQ Corporation affiliate (or company);
- 1.13 subject to paragraph 1.4, not sell the shares of the Company or all or a substantial part of the business and assets of the Group Companies without the prior written consent of the Seller.
2. The Seller and the Buyer shall each endeavour to procure that Sukhpal Singh Ahluwalia, Maheshkumar Shah and Neil Brown shall disclose to the Seller and the Buyer as soon as reasonably practicable any proposals for the events referred to in paragraph 1 above to take place and/or any such events actually taking place.
3. Save in relation to paragraphs 1.1, 1.2 and 1.3, the Buyer may do or allow anything to be done (the “**Proposed Activity**”) which would otherwise contravene paragraph 1 of this schedule provided that before it does so an adjustment is agreed or determined as set out in this paragraph to take account of the effect of the Proposed Activity on the 2012 EBITDA and 2013 EBITDA (as the case may be) for the year in which Proposed Activity is to be carried out or the parties agree that no adjustment is required. Any such adjustment shall be:
- 3.1 agreed between the Seller and the Buyer on or before the date falling 15 Business Days after the date on which the Buyer notifies the Seller of the Proposed Activity and its proposal for the adjustment; or
- 3.2 in the event the parties are not able to agree upon the adjustment within such period, determined by Independent Accountant appointed in accordance with this Agreement and each party shall promptly provide to the other or the other’s accountants or professional advisers (and to the Independent Accountant) all such documents and information as may reasonably be requested for the purpose of agreeing or determining the adjustment.
4. The Buyer may sell the shares of the Company and/ or all or a substantial part of the business and assets of the Group Companies without the prior written consent of the Seller provided that, in such circumstances:
- 4.1 in the event that EBITDA Statement in respect of the 2012 Earn-out Period has not been agreed or determined prior to the date of such sale, the 2012 EBITDA shall be deemed to be equal to the 2012 EBITDA Target; and
- 4.2 in the event that EBITDA Statement in respect of the 2013 Earn-out Period has not been agreed or determined prior to the date of such sale, the 2013 EBITDA shall be deemed to be equal to the 2013 EBITDA Target.
5. In the event that the actual capital expenditure incurred during the 2012 Earn-out Period exceeds the capital expenditure planned to be incurred during such period as stated in the Business Plan (the amount of such excess being “Excess Capital Expenditure”), the 2013 EBITDA Target shall be increased by the sum of £200 for every £1,000 of Excess Capital Expenditure.

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6. In the event that the Buyer acts in breach of paragraph 1 then the Seller shall be entitled by written notice to the Buyer giving reasonable details of such breach to require an adjustment to be made (such notice to be received no later than the earlier of 45 days after the Seller becomes aware of such breach) and can elect that the process set out in paragraph 3 be followed in order to determine such adjustment, provided that:
- 6.1 in the event that the Buyer takes adequate steps to remedy such breach within 45 Business Days of receipt of such notice or the Seller and the Buyer agree on an adjustment to the 2012 EBITDA Target or the 2013 EBITDA Target (as the case may be) or that no such adjustment is required to be made, no adjustment shall be made pursuant to paragraph 3; and
- 6.2 in the event that the Seller fails to give such a notice by the earlier of:
- 6.2.1 the last day of the period of 45 days referred to in paragraph 1.5; and
- 6.2.2 the date that the EBITDA Statement for the relevant year is agreed or determined,
- the Seller shall not be entitled to require such adjustment.
7. In relation to any act by the Buyer which would constitute a breach of paragraph 1, paragraph 6 shall not apply to the extent that Sukhpal Singh Ahluwalia has given his prior written consent (which may be given by electronic mail) to such act.

SCHEDULE 7

EBITDA Policies

The following policies shall be used in the calculation of EBITDA

1. Calculation of EBITDA

1.1 EBITDA shall be calculated:

- 1.1.1 in accordance with the specific accounting principles, practices and policies and the specific accounting bases and treatments set out in this schedule 7 and consistently applied; and
- 1.1.2 on the same basis and using the same accounting principles, practices and policies applied in the preparation of the Completion Financial Statements as adjusted by the Post-Completion Adjustments. UK GAAP shall be consistently applied. For example, the Group Companies have historically accounted for its Peugeot vehicle leases as operating leases and that practice shall continue when calculating EBITDA despite the fact that Buyer may account for such Peugeot leases as finance leases after Completion.

1.2 In the event of any conflict between the application of sub-paragraphs 1.1.1 and 1.1.2, the application of sub-paragraph 1.1.1 shall take precedence over the application of sub paragraph 1.1.2.

2. General

2.1 Results will be calculated excluding the reversal of excess accruals/provisions from prior periods.

2.2 Any unusual one-off gains exceeding £500,000 per annum in the aggregate (net of one-off losses described in the following sentence) resulting from events that took place prior to Completion (e.g. legal settlements, etc.) will be excluded from the calculation of EBITDA. Any unusual one-off losses exceeding £500,000 per annum in the aggregate (net of one-time gains described in the preceding sentence) resulting from events that took place prior to Completion will be excluded from the calculation of EBITDA only to the extent that these were fairly disclosed in the Disclosure Letter and provided for in the Completion Financial Statements.

2.3 The calculation of EBITDA will exclude any general charges (e.g. management fees) from other members of the Buyer's Group unless they relate to reimbursement of direct costs that benefit the Group Companies. In the event that the Buyer's Group causes the Group Companies to replace any provider of services (e.g., insurance), the Group Companies shall be charged for such services on an arm's length third party basis; in good faith or EBITDA shall be adjusted in good faith on such basis, provided however, the combined fees that will be charged relating to the preparation and filing of the Group Companies' statutory accounts and the corporation tax returns shall be £85,000 for 2012 and £100,000 for 2013.

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- 2.4 Gains/losses on the sale of fixed assets will be excluded from the calculation of EBITDA.
3. **Sales/Trade debtors**
- 3.1 All sales and related trade debtor accounts to be recorded on a UK GAAP basis. In particular, all sales will be recorded only when the corresponding goods have been delivered.
- 3.2 The Bad Debt Provision in the Management Accounts will be re-valued in the Post-Completion Adjustments, and year-end adjustments will be made after Completion to the profit and loss accounts; both according to existing accounting policies of the Guarantor.
4. **Inventory/COGS**
- 4.1 Inventory invoice cost will continue to be maintained on a moving average basis and will include freight in and import duties.
- 4.2 The Stock in the Management Accounts will be re-valued as a Post-Completion Adjustment.
- 4.3 Stock Provisions in the Management Accounts for missing/damage (account #31050) and excess & obsolete (account #31500) will be re-valued as a Post-Completion Adjustment, and year-end adjustments will be made to the profit and loss accounts in accordance with the accounting policies of the Buyer's Group existing at Completion.
5. **Trade Creditors and Sundry Creditors**
- 5.1 All amounts owed to Trade Creditors and Sundry Creditors for goods effectively received (either received or shipped when FOB shipping point) will be fully provided for at each year end.
- 5.2 Vendor rebates related to parts purchases and reimbursement of marketing costs will be accounted for according to UK GAAP on an accrual basis. A provision for such rebates will be made as a Post-Completion Adjustment. Annual adjustments will be made to the profit and loss accounts to reflect the ongoing recording of these items on a UK GAAP basis. Notwithstanding the above, rebates from ATR International AG ("ATR") will continue to be recorded on a cash received basis; provided however (a) in no event shall any ATR rebates relate to more than the one immediately preceding calendar year of parts purchased by the Group Companies, and (b) in the event ATR is replaced with an alternative vendor rebate program, an adjustment shall be made to EBITDA as of the date of such replacement to (i) cause the ATR rebate to be accounted for on an accrual basis (instead of a cash received basis) during the year of such replacement; and (ii) the alternative vendor rebate program shall be accounted for on an accrual basis during such year.

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6. **Accruals**
- 6.1 Accruals — Rent in the Management Accounts will be re-valued as a Post-Completion Adjustment, and annual adjustments will be made to the profit and loss accounts to reflect the revised provisions.
- 6.2 All other Accruals at each year-end will reflect a provision for expenses incurred but not yet paid that can be specifically identified as a future cash commitment and reasonably quantified on a UK GAAP basis.
7. **Finance Leases**
- 7.1 To the extent any new or replacement assets are purchased outright as a tangible (fixed) asset (or leased under a finance lease) where such class of asset had previously been acquired under an operating lease, an adjustment to EBITDA will be made to account for the asset as if it had been acquired under an operating lease, and conversely, to the extent any new or replacement assets are acquired under an operating lease, where such class of asset had previously been purchased outright as a tangible (fixed) asset (or leased under a finance lease), an adjustment to EBITDA will be made to account for the asset as if it had been acquired as a tangible (fixed) asset; provided however, to the extent any changes in purchasing and leasing practices are contemplated by the Business Plan, no adjustment shall be made.
8. **Foreign Exchange Hedges**
- Realised and unrealised foreign exchange hedge gains and losses will be calculated at the end of each year and included in the calculation of EBITDA.
9. **Future projects/acquisitions**
- In evaluating future capital projects, acquisitions, or investments, a financial model will be prepared and presented for approval first by the boards of the Company and ECP, and then by executive management of the Guarantor (and the board of directors of the Guarantor when required). Upon agreement, the project or acquisition EBITDA agreed in the financial model will be used to adjust the earn-out EBITDA targets for the relevant periods (90% of the pro forma EBITDA to be used for acquisitions).

SCHEDULE 8

Finance leases

Barclays	35010	
75/8253 1282-5	Lease Purchase Linked Qtrly Interest	Office Refurbishment Equipment
75/8253 4112-4	Lease Purchase Linked Qtrly Interest	Refurbishment
75/8254 2006-7	Lease Purchase Linked Qtrly Interest	Peugeot Car x 3
75/8254 7123-0	Lease Purchase Linked Qtrly Interest	Mercedes KY56GCO
75/8254 7109-5	Lease Purchase Linked Qtrly Interest	FLTs
8255 2004	Lease Purchase Linked Qtrly Interest	Matiz x 3
8256 33125	FP10MVR A3 Audi	FP10MVR A3 Audi
Lombard	35040	
Agreement Number	Agreement Type	Description
AD55000984	Asset Finance	Various assets
AD61000521	Unsecured Commercial Loan	Various assets
AU91000103	Lease Purchase	NDC Racking Shelving/Mezz Floor
AU91000106	Lease Purchase	Branch Racking Shelving/Mezz Floors

91000111	Lease Purchase	13 Combos
91000112	Lease Purchase	13 Combos
G00000009	Lease Purchase	20 Combos
91000123	Lease Purchase	6 Combos
LloydsTSB	35050	
Agreement Number	Agreement Type	Description
8688444960	HP	50 Combos
8688446930	HP	20 Combos
8688453600	HP	9 Combos
8688455840	HP	10 Combos
8688472000	HP	92 Combos
8688478860	HP	27 Combos 2 Astras
8688479960	HP	9 Combos 3 Corsas 3 Insignia 10 Astra 7 Movanos
8688494000	HP	31 Combos 2 Astras 3 Corsa
8688528460	HP	Linde FLTs
8688528430	HP	3 Combos
8688530520	HP	20 Combos

8688532640	HP	7 Combos
8688517750	HP	Linde FLTs
8688553600	HP	12 Combos
86885554080	HP	14 Combos
8688557030	HP	14 Combos
8688557970	HP	14 Combos
8688588440	HP	12 Combos
8688591950	HP	12 Combos

HSBC

35060

Agreement Number

Agreement Type

Description

207110	HP Agreement	20 Combos
208205	Asset Purchase	20 Combos
208713	Asset Purchase	10 Combos
208914	Asset Purchase	14 Combos
208949	Asset Purchase	15 Combos

Barclays

36010

08/08253 6796-4/27

Loan Agreement
Linked Qtrly Interest
Unregulated

Refurbishment &
Office Equipment

08/8254 2001-6

Loan Agreement
Linked Qtrly Interest
Unregulated

Refit

08/8254 7125-7

Loan Agreement
Linked Qtrly Interest
Unregulated

Refit

08/8255 2014-2

Loan Agreement
Linked Qtrly Interest
Unregulated

Fixtures and fittings

Property Mortgage

Property	Agreement No.	
Newcastle		44974131
Guildford		24740734
Aylesbury		74865456
Hemel Hempstead		84924053
Leicester		14806883
Flat # 115		4253922
Flats # 128		24391322
Flat # 102		54989821
Flat # 97		54655729
Bank of Scotland	36020	
Property	Agreement No.	
Flat 17 Willow Tree Court Crawford Avenue Middlesex HA0 2RB		6138999
Bank of Scotland	36030	
Property	Agreement No.	
Plot 5 Viewpont Court Pinner Green Middlesex HA5		6147406

SCHEDULE 9

Proportion

<u>Name</u>	<u>Proportion (%)</u>
Draco Limited	89.78
Minerva Trust Company Limited (as trustee of MBNK Trust)	1.80
Neil Graeme Brown	2.00
Paul Stuart Creasey	0.29
Stephen James Horne	1.08
David John Bevan	0.33
Christopher Barella	0.54
David William Beak	0.84
Arpana Mangrola	0.33
Sukhbir Singh Kapoor	1.08
Martin Kenneth Gray	0.60
William Kenneth Stimson	0.25
Andrew Craig Hamilton	0.42
Michael Ronald Spalding	0.66
Total	100

SCHEDULE 10

Completion Financial Statements

The terms “ **Control-Cash** ”, “ **Sales** ”, “ **Trade Debtors** ”, “ **Trade Creditors** ” and “ **Sundry Creditors** ” in this schedule 10 refer to the corresponding captions in the Management Accounts.

1. Accounting Treatment — General
- 1.1 The Completion Financial Statements shall be prepared:
 - 1.1.1 in accordance with the specific accounting principles, practices and policies and the specific accounting bases and treatments set out in this schedule 10; and
 - 1.1.2 on the same basis and using same the accounting principles, practices and policies applied in the preparation of the Accounts. UK GAAP shall be consistently applied.
- 1.2 In the event of any conflict between the application of sub-paragraphs 1.1.1 and 1.1.2, the application of sub-paragraph 1.1.1 shall take precedence over the application of sub-paragraph 1.1.2.
- 1.3 The Completion Financial Statements shall be prepared on the basis that they relate to the Group Companies as a going concern and shall exclude any effect of the change of control or ownership of the Group Companies contemplated by this Agreement or any other effect of this Agreement, including the Post-Closing Adjustments.
- 1.4 The Completion Financial Statements shall be prepared not on an interim basis, but on the same basis as the Accounts. All other Accruals at each year-end will reflect a provision for expenses incurred but not yet paid that can be specifically identified as a future cash commitment and reasonably quantified on a UK GAAP basis.
2. Accounting Treatment — Cash
- 2.1 Cash shall mean:
 - 2.1.1 all cash at bank and in hand;
 - 2.1.2 any credit card payments made in favour of a Group Company prior to Completion:
 - 2.1.2.1 which are not received prior to Completion; and
 - 2.1.2.2 which are received after Completion but prior to preparation by the Buyer of the Draft Completion Financial Statements pursuant to clause 4.1;but shall be adjusted to reflect the other items in this schedule.
- 2.2 There shall be excluded from Cash any amounts of cash of ADS and/ or VDS.

- 2.3 Otherwise than as specified in this schedule, Cash shall be reported and reconciled in accordance with UK GAAP.
- 2.4 Control-Cash accounts shall be reported as Trade Debtors and any amounts standing to the credit of such accounts shall not be treated as Cash.
- 2.5 An amount equal to the aggregate of the following items shall be deducted from the amount of Cash:
- 2.5.1 the aggregate of any accounts payable due as of month-end September and for which payments would normally have been made, but have not been made for whatever reason;
 - 2.5.2 in the event that the actual capital expenditure of the Company for the period from 1 January 2011 to 30 September 2011 as shown in the Completion Financial Statements is less than £5,572,000, an amount equal to the shortfall;
 - 2.5.3 to the extent that the same has not otherwise been paid and deducted from Cash, an amount equal to (a) the payroll (excluding PAYE and employer's national insurance contributions in respect of the calendar month to 30 September 2011); (b) rents payable prior to Completion under applicable lease terms with respect to all Leasehold Properties; (c) VAT payable prior to Completion under applicable laws; and (d) statement amounts owed to suppliers prior to Completion pursuant to the green highlighted entries in document 4.4.9.4 in the Data Room only as adjusted for legitimate deductions made in the ordinary course of business.
 - 2.5.4 the sum of £262,000;
 - 2.5.5 £20,000 (exclusive of VAT) or such other amount as is due to Merrill Corporation in respect of services provided in connection with the transaction the subject of this Agreement;
 - 2.5.6 the cost over £12,000 (exclusive of VAT) of acquiring the software licences required as at Completion;
 - 2.5.7 an amount equal to the gross amounts payable by ECP to those persons identified as Person A, Person B, Company 1 and Company 2 in the Disclosure Letter in the disclosure made in relation to Warranty 4.1 and Warranty 4.1, together with an amount equal to any employer's national insurance contributions chargeable in respect of any such amounts; and
 - 2.5.8 £1,750 (which represents 50% of the costs of pre-payment of facilities due to Barclays Bank plc).

-
3. Sales/Trade Debtors
All Sales and related Trade Debtor accounts shall be recorded on a UK GAAP basis. In particular, all sales will be recorded only when the corresponding goods have been delivered.
 4. Trade Creditors and Sundry Creditors
All amounts owed to Trade Creditors and Sundry Creditors for goods effectively received (either received or shipped when FOB shipping point) will be fully provided for at the end of each period.
 5. Peugeot leases
The Peugeot vehicle leases will be treated as operating leases (not financing leases or debt) on the Completion Financial Statements.

SIGNED by)
duly authorised on behalf of)
DRACO LIMITED)



FOR BEAUMONT (DIRECTORS) LIMITED
SOLE CORPORATE DIRECTOR

SIGNED by)
duly authorised on behalf of)
LKQ EURO LIMITED)



SIGNED by)
duly authorised on behalf of)
LKQ CORPORATION)

Walter P. Hanley

LKQ CORPORATION AND SUBSIDIARIES
Computation of Ratio of Earnings to Fixed Charges
(In Thousands, Except Ratios)
(Unaudited)

	Year Ended December 31,				
	2007	2008	2009	2010	2011
Income from continuing operations before provision for income taxes	\$ 104,654	\$ 159,133	\$ 205,317	\$ 270,125	\$ 335,771
Fixed charges	28,478	56,271	53,993	54,769	56,901
Amortization of capitalized interest, net of interest capitalized	(425)	(93)	44	2	(318)
Earnings available for fixed charges	<u>\$ 132,707</u>	<u>\$ 215,311</u>	<u>\$ 259,354</u>	<u>\$ 324,896</u>	<u>\$ 392,354</u>
Fixed charges:					
Interest expense, including amortization of debt issuance costs	\$ 17,755	\$ 37,830	\$ 32,252	\$ 29,765	\$ 24,307
Capitalized interest	425	108	—	35	479
Portion of rental expense representative of interest	10,298	18,333	21,741	24,969	32,115
Total fixed charges	<u>\$ 28,478</u>	<u>\$ 56,271</u>	<u>\$ 53,993</u>	<u>\$ 54,769</u>	<u>\$ 56,901</u>
Ratio of earnings to fixed charges	<u>4.7</u>	<u>3.8</u>	<u>4.8</u>	<u>5.9</u>	<u>6.9</u>

LIST OF SUBSIDIARIES OF LKQ CORPORATION (as of 12/31/11)

Subsidiary	Jurisdiction	Assumed Names
U.S. Entities		
Accu-Parts LLC	New York	
Akron Airport Properties, Inc.	Ohio	
American Recycling International, Inc.	California	Pick A Part Auto Dismantling
A-Reliable Auto Parts & Wreckers, Inc.	Illinois	LKQ Self Service Auto Parts-Rockford; ARSCO; LKQ Heavy Duty Truck Core
ATK Motorsports Inc.	California	
Budget Auto Parts U-Pull-It, Inc.	Louisiana	
City Auto Parts of Durham, Inc.	North Carolina	LKQ Self Service Auto Parts-Durham
Damron Holding Company, LLC	Delaware	LKQ Melbourne; LKQ Service Center Crystal River; LKQ Fort Myers
DAP Trucking, LLC	Florida	
Double R Auto Sales, Inc.	Florida	
Gearhead Engines Inc.	California	
Greenleaf Auto Recyclers, LLC	Delaware	Saturn Wheel Company; Heartland Aluminum; Proformance Powertrain; LKQ North Florida; LKQ West Florida; LKQ Heavy Duty Truck-Carolina; LKQ Leominster; ABC Used Auto Parts; Greenleaf Quality Recycled Auto Parts; Potomac German Mid-Atlantic
KAI China LLC	Delaware	
KAIR IL, LLC	Illinois	
Keystone Automotive Industries, Inc.	California	Transwheel, Coast to Coast International; Keystone Automotive-San Francisco Bay Area; LKQ of Cleveland
Kwik Auto Body Supplies, Inc.	Massachusetts	
Lakefront Capital Holdings, Inc.	California	
LKQ 1 st Choice Auto Parts, LLC	Oklahoma	
LKQ 250 Auto, Inc.	Ohio	
LKQ A&R Auto Parts, Inc.	South Carolina	
LKQ All Models Corp.	Arizona	Wholesale Auto Recyclers; Cars 'n More; LKQ of Arizona
LKQ Apex Auto Parts, Inc.	Oklahoma	LKQ Self Service Auto Parts - Oklahoma City
LKQ Atlanta, L.P.	Delaware	LKQ Carolina
LKQ Auto Parts of Central California, Inc.	California	LKQ Valley Truck Parts; LKQ Acme Truck Parts; LKQ Specialized Parts-Central California; LKQ ACME Truck Parts
LKQ Auto Parts of Memphis, Inc.	Arkansas	LKQ of Tennessee; LKQ Preferred Auto Parts
LKQ Auto Parts of North Texas, Inc.	Delaware	
LKQ Auto Parts of North Texas, L.P.	Delaware	LKQ Auto Parts of Central Texas; LKQ Self Service Auto Parts-Austin
LKQ Auto Parts of Orlando, LLC	Florida	LKQ Self Service Auto Parts-Orlando
LKQ Auto Parts of Utah, LLC	Utah	
LKQ Best Automotive Corp.	Delaware	LKQ Auto Parts of South Texas; A-1 Auto Salvage Pick & Pull; The Engine & Transmission Store; LKQ Automotive Core Services; LKQ Self Service Auto Parts-Houston SW; LKQ Self Service Auto Parts-Northville; LKQ Self Service Auto Parts-Wallisville
LKQ Birmingham, Inc.	Alabama	LKQ Gulf Coast; LKQ Plunks Truck Parts & Equipment - West Monroe
LKQ Brad's Auto & Truck Parts, Inc.	Oregon	
LKQ Broadway Auto Parts, Inc.	New York	LKQ Buffalo; LKQ Self Service Auto Parts-Buffalo
LKQ Copher Self Service Auto Parts-Bradenton Inc.	Florida	
LKQ Copher Self Service Auto Parts-Clearwater Inc.	Florida	
LKQ Copher Self Service Auto Parts-St. Petersburg Inc.	Florida	
LKQ Copher Self Service Auto Parts-Tampa Inc.	Florida	

LIST OF SUBSIDIARIES OF LKQ CORPORATION (as of 12/31/11)

Subsidiary	Jurisdiction	Assumed Names
LKQ Crystal River, Inc.	Florida	LKQ Fort Myers; LKQ Self Service Auto Parts-West Palm Beach; LKQ Self Service Auto Parts-Riviera Beach
LKQ Delaware LLP	Delaware	
LKQ Finance 1 LLC	Delaware	
LKQ Finance 2 LLC	Delaware	
LKQ Foster Auto Parts Salem, Inc.	Oregon	Foster Auto Parts Salem
LKQ Foster Auto Parts Westside LLC	Oregon	
LKQ Foster Auto Parts, Inc.	Oregon	LKQ U-Pull-It Auto Wrecking; U-Pull-It Auto Wrecking; LKQ KC Truck Parts-Inland Empire; LKQ KC Truck Parts-Western Washington; LKQ KC Truck Parts-Montana; LKQ Barger Auto Parts; LKQ Wholesale Truck Parts & Equipment; LKQ of Eastern Idaho
LKQ Gorham Auto Parts Corp.	Maine	
LKQ Great Lakes Corp.	Indiana	LKQ Star Auto Parts; LKQ Chicago
LKQ Heavy Truck-Texas Best Diesel, L.P.	Texas	LKQ Fleet Solutions; LKQ International Sales
LKQ Holding Co.	Delaware	
LKQ Hunts Point Auto Parts Corp.	New York	Partsland USA; LKQ Auto Parts of Eastern Pennsylvania; LKQ Auto Parts
LKQ Lakenor Auto & Truck Salvage, Inc.	California	LKQ of Southern California; LKQ of Las Vegas
LKQ Management Company	Delaware	
LKQ Metro, Inc.	Illinois	
LKQ Mid-America Auto Parts, Inc.	Kansas	Mabry Auto Salvage; LKQ of Colorado; LKQ of Oklahoma City; LKQ of NW Arkansas; LKQ Heavy Truck-Marshfield
LKQ Midwest Auto Parts Corp.	Nebraska	Midwest Foreign Auto; LKQ Midwest Auto
LKQ Minnesota, Inc.	Minnesota	LKQ Albert Lea
LKQ of Indiana, Inc.	Indiana	LKQ Self Service Auto Parts-South Bend
LKQ of Michigan, Inc.	Michigan	
LKQ of Nevada, Inc.	Nevada	
LKQ of Tennessee, Inc.	Tennessee	
LKQ Online Corp.	Delaware	
LKQ Penn-Mar, Inc.	Pennsylvania	LKQ Thruway Auto Parts
LKQ Plunks Truck Parts & Equipment—Jackson, Inc.	Mississippi	
LKQ Powertrain, Inc.	Delaware	
LKQ Raleigh Auto Parts Corp.	North Carolina	
LKQ Route 16 Used Auto Parts, Inc.	Massachusetts	Diversified Marketing Solutions
LKQ Salisbury, Inc.	North Carolina	LKQ of Carolina; LKQ Richmond; LKQ East Carolina; LKQ Self Service East NC; LKQ Self Service Auto Parts-Charlotte
LKQ Savannah, Inc.	Georgia	LKQ Self Service Auto Parts-Savannah
LKQ Self Service Auto Parts-Holland, Inc.	Michigan	LKQ Self Service Auto Parts-Grand Rapids
LKQ Self Service Auto Parts-Kalamazoo, Inc.	Michigan	
LKQ Self Service Auto Parts-Memphis LLC	Tennessee	
LKQ Self Service Auto Parts-Tulsa, Inc.	Oklahoma	
LKQ Smart Parts, Inc.	Delaware	LKQ Viking Auto Salvage
LKQ Southwick LLC	Massachusetts	
LKQ Taiwan Holding Company	Illinois	
LKQ Tire & Recycling, Inc.	Delaware	
LKQ Trading Company	Delaware	
LKQ Triplett ASAP, Inc.	Ohio	LKQ Heavy Truck-Goody's; LKQ Pittsburgh
LKQ U-Pull-It Auto Damascus, Inc.	Oregon	LKQ U-Pull-It Damascus
LKQ U-Pull-It Tigard, Inc.	Oregon	
LKQ West Michigan Auto Parts, Inc.	Michigan	
Michael Auto Parts, Incorporated	Florida	

LIST OF SUBSIDIARIES OF LKQ CORPORATION (as of 12/31/11)

Subsidiary	Jurisdiction	Assumed Names
North American ATK Corporation P.B.E. Specialties, Inc. Pick-Your-Part Auto Wrecking	California Massachusetts California	Yamato Engine Specialists LKQ Pick A Part-Riverside; LKQ Hillside Truck & Auto Recyclers; LKQ Pick A Part-San Bernardino; LKQ Midnight Auto & Truck Recyclers; LKQ Pick A Part-Hesperia; LKQ Desert High Truck & Auto Recyclers
Potomac German Auto South, Inc. Potomac German Auto, Inc. Pull-N-Save Auto Parts, LLC	Florida Maryland Colorado	LKQ Norfolk; LKQ Heavy Truck-Maryland LKQ Pull-N-Save Auto Parts of Aurora LLC; LKQ of Colorado; LKQ Self Service Auto Parts-Denver; LKQ Western Truck Parts LKQ Auto Parts of Northern California; LKQ Reno; LKQ Specialized Parts-Northern California
Redding Auto Center, Inc. Scrap Processors, LLC Speedway Pull-N-Save Auto Parts, LLC Supreme Auto Parts, Inc. U-Pull-It, Inc. U-Pull-It, North, LLC	California Illinois Florida Pennsylvania Illinois Illinois	LKQ Self Service Auto Parts of Daytona, LLC
Foreign Entities 0579719 Manitoba Ltd. 1323352 Alberta ULC 1323410 Alberta ULC Action Recycled Auto Parts (1997) Ltd. Automotive Data Services Limited (51% stake) Car Parts 4 Less Limited Distribuidora Hermanos Copher Internacional, SA Euro Car Parts (Northern Ireland) Limited Euro Car Parts Holdings Limited Euro Car Parts Limited Euro Car Parts Ltd Euro Garage Solutions Ltd Hermanos Copher Internacional, SA Keystone Automotive de Mexico, Sociedad de Responsabilidad Limitada de Capital Variable Keystone Automotive Industries CDN, Inc. Keystone Automotive Industries ON, Inc. LKQ Canada Auto Parts Inc. LKQ Canada ULC LKQ Euro Limited LKQ Ontario LP LKQ UK Finance 1 LLP LKQ UK Finance 2 LLP LKQ Trucks and Parts de Mexico S. de R.L de C.V. Seebeck 31 Limited	Manitoba Alberta Alberta Manitoba United Kingdom United Kingdom Costa Rica United Kingdom United Kingdom United Kingdom Ireland United Kingdom Guatemala Mexico Ontario Ontario Ontario Alberta United Kingdom Ontario United Kingdom United Kingdom Mexico United Kingdom	

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-110149, 333-128151 and 333-174450 on Form S-8, Registration Statement No. 333-160394 of Form S-3, and Registration Statement Nos. 333-133911 and 333-160395 on Form S-4 of our reports dated February 27, 2012, relating to the consolidated financial statements and financial statement schedule of LKQ Corporation and subsidiaries and the effectiveness of LKQ Corporation and subsidiaries' internal control over financial reporting, appearing in this Annual Report on Form 10-K of LKQ Corporation for the year ended December 31, 2011.

/s/ DELOITTE & TOUCHE LLP
Deloitte & Touche LLP

Chicago, Illinois
February 27, 2012

CERTIFICATIONS

I, Robert L. Wagman, certify that:

1. I have reviewed this annual report on Form 10-K of LKQ Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

February 27, 2012

/s/ ROBERT L. WAGMAN

Robert L. Wagman
President and Chief Executive Officer

CERTIFICATIONS

I, John S. Quinn, certify that:

1. I have reviewed this annual report on Form 10-K of LKQ Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

February 27, 2012

/s/ JOHN S. QUINN

John S. Quinn
Executive Vice President and Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of LKQ Corporation (the "Company") on Form 10-K for the fiscal year ended December 31, 2011, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, as President and Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 27, 2012

/s/ ROBERT L. WAGMAN
Robert L. Wagman
President and Chief Executive Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of LKQ Corporation (the "Company") on Form 10-K for the fiscal year ended December 31, 2011, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, as Executive Vice President and Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 27, 2012

/s/ JOHN S. QUINN
John S. Quinn
Executive Vice President and Chief Financial Officer