

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

For the Quarterly Period Ended February 28, 2001

OR

Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

Commission File Number: 0-19417

PROGRESS SOFTWARE CORPORATION  
(Exact name of registrant as specified in its charter)

MASSACHUSETTS	04-2746201
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

14 Oak Park  
Bedford, Massachusetts 01730  
(Address of principal executive offices)  
Telephone Number: (781) 280-4000

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 X No\_\_\_\_\_

As of April 9, 2001, there were 35,356,000 shares of the Registrant's Common Stock, \$.01 par value per share, outstanding.

## PROGRESS SOFTWARE CORPORATION

## FORM 10-Q

FOR THE THREE MONTHS ENDED FEBRUARY 28, 2001

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## PART 1. FINANCIAL INFORMATION

## ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

## PROGRESS SOFTWARE CORPORATION

CONDENSED CONSOLIDATED BALANCE SHEETS  
(In thousands)  
(Unaudited)

	Feb. 28, 2001 ----	Nov. 30, 2000 ----
ASSETS		
Current assets:		
Cash and equivalents	\$ 101,226	\$ 90,722
Short-term investments	61,697	67,384
Accounts receivable (less allowances of \$7,244 in 2001 and \$7,144 in 2000)	50,248	49,429
Other current assets	11,703	12,303
Deferred income taxes	9,905	9,834
	-----	-----
Total current assets	234,779	229,672
	-----	-----
Property and equipment-net	37,192	37,427
Other assets	10,734	11,706
	-----	-----
Total	\$ 282,705	\$ 278,805
	=====	=====
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 8,911	\$ 11,010
Accrued compensation and related taxes	15,478	18,747
Income taxes payable	6,346	11,348
Other current liabilities	10,851	9,821
Deferred revenue	69,437	61,066
	-----	-----
Total current liabilities	111,023	111,992
	-----	-----
Commitments and contingent liabilities		
Shareholders' equity:		
Preferred stock, \$.01 par value, authorized, 1,000 shares; issued, none		
Common stock and additional paid in capital, \$.01 par value, authorized, 100,000 shares; issued, 35,575 shares in 2001 and 35,315 shares in 2000	41,508	38,082
Retained earnings	132,773	131,896
Accumulated other comprehensive loss	(2,599)	(3,165)
	-----	-----
Total shareholders' equity	171,682	166,813
	-----	-----
Total	\$ 282,705	\$ 278,805
	=====	=====

See notes to condensed consolidated financial statements.

## PROGRESS SOFTWARE CORPORATION

## CONDENSED CONSOLIDATED STATEMENTS OF INCOME

(In thousands, except per share data)

(Unaudited)

	Three Months Ended	
	Feb. 28, 2001	Feb. 29, 2000
	----	----
Revenue:		
Software licenses	\$ 21,834	\$ 33,237
Maintenance and services	38,405	38,894
	-----	-----
Total revenue	60,239	72,131
	-----	-----
Costs and expenses:		
Cost of software licenses	2,387	2,761
Cost of maintenance and services	12,901	13,991
Sales and marketing	25,832	26,038
Product development	10,323	10,359
General and administrative	7,339	7,336
	-----	-----
Total costs and expenses	58,782	60,485
	-----	-----
Income from operations	1,457	11,646
	-----	-----
Other income (expense):		
Interest income	2,004	1,810
Foreign currency loss	(498)	(105)
Other expense	(89)	(16)
	-----	-----
Total other income	1,417	1,689
	-----	-----
Income before provision for income taxes	2,874	13,335
Provision for income taxes	891	4,267
	-----	-----
Net income	\$ 1,983	\$ 9,068
	=====	=====
Basic earnings per share	\$ 0.06	\$ 0.25
	=====	=====
Weighted average shares outstanding (basic)	35,465	35,670
	=====	=====
Diluted earnings per share	\$ 0.05	\$ 0.22
	=====	=====
Weighted average shares outstanding (diluted)	38,391	40,666
	=====	=====

See notes to condensed consolidated financial statements.

## PROGRESS SOFTWARE CORPORATION

## CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

(Unaudited)

	Three Months Ended	
	Feb. 28, 2001	Feb. 29, 2000
	----	----
Cash flows from operating activities:		
Net income	\$ 1,983	\$ 9,068
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization of property and equipment	2,555	2,478
Amortization of intangible assets	509	534
Deferred income taxes	(69)	(615)
Other noncash charges	--	405
Changes in operating assets and liabilities:		
Accounts receivable	(6)	(3,083)
Other current assets	815	(1,985)
Accounts payable and accrued liabilities	(4,162)	(7,991)
Income taxes payable	(4,349)	3,187
Deferred revenue	6,928	11,817
	-----	-----
Net cash provided by operating activities	4,204	13,815
	-----	-----
Cash flows from investing activities:		
Purchases of investments available for sale	(7,990)	(26,570)
Maturities of investments available for sale	14,116	19,173
Purchases of property and equipment	(2,185)	(2,381)
Capitalized software costs	--	(400)
Acquisition of distributor	--	(2,100)
Decrease in other noncurrent assets	335	232
	-----	-----
Net cash provided by (used for) investing activities	4,276	(12,046)
	-----	-----
Cash flows from financing activities:		
Proceeds from issuance of common stock	2,894	2,043
Repurchase of common stock	(1,254)	(2,870)
	-----	-----
Net cash provided by (used for) financing activities	1,640	(827)
	-----	-----
Effect of exchange rate changes on cash	384	(680)
	-----	-----
Net increase in cash and equivalents	10,504	262
Cash and equivalents, beginning of period	90,722	81,651
	-----	-----
Cash and equivalents, end of period	\$ 101,226	\$ 81,913
	=====	=====

See notes to condensed consolidated financial statements.

## PROGRESS SOFTWARE CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(Unaudited)

## 1. Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared by Progress Software Corporation (the Company) pursuant to the rules and regulations of the Securities and Exchange Commission regarding interim financial reporting. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements and should be read in conjunction with the audited financial statements included in the Company's Annual Report and Form 10-K for the fiscal year ended November 30, 2000.

In the opinion of management, the accompanying unaudited condensed consolidated financial statements have been prepared on the same basis as the audited financial statements, and include all adjustments, consisting only of normal recurring adjustments, necessary for a fair presentation of the results of the interim periods presented. The operating results for the interim periods presented are not necessarily indicative of the results expected for the full fiscal year.

## 2. Income Taxes

The Company provides for income taxes at the end of each interim period based on the estimated effective tax rate for the full fiscal year. Cumulative adjustments to the tax provision are recorded in the interim period in which a change in the estimated annual effective rate is determined.

## 3. Earnings Per Share

Basic earnings per share is calculated using the weighted average number of common shares outstanding. Diluted earnings per share is computed on the basis of the weighted average number of common shares outstanding plus the effect of outstanding stock options using the treasury stock method.

## 4. Comprehensive Income

Comprehensive income includes foreign currency translation gains and losses, net of tax, and unrealized gains and losses on equity securities, net of tax, that have been previously excluded from net income and reflected instead in shareholders' equity. The following table sets forth the calculation of comprehensive income on an interim basis:

	Three Months Ended	
	Feb. 28, 2001	Feb. 29, 2000
	----	----
Net income	\$ 1,983	\$ 9,068
Foreign currency translation adjustments	127	(219)
Unrealized holding gains (losses) on investments	439	(176)
	-----	-----
Total comprehensive income	\$ 2,549	\$ 8,673
	=====	=====

## 5. Accounting for Derivative Instruments and Hedging Activities

On December 1, 2000, the Company adopted Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities" (SFAS 133), which establishes accounting and reporting standards for derivative instruments. All derivatives, whether designated in hedging relationships or not, are required to be recorded on the balance sheet at fair value. If the derivative is designated as a fair value hedge, the changes in the fair value of the derivative and of the hedged item attributable to the hedged risk are recognized in earnings. If the derivative is designated as a cash flow hedge, the effective portions of changes in the fair value of the derivative are recorded in other comprehensive income and are recognized in the income statement when the hedged item affects earnings. Ineffective portions of changes in the fair value of cash flow hedges are recognized in earnings. Adoption of SFAS 133 did not have a material effect on the Company's consolidated financial position or results of operations.

The Company uses derivative instruments to manage exposures to foreign currency. The Company's objectives for holding derivatives are to minimize the risks using the most effective methods to eliminate or reduce the impacts of these exposures. Certain forecasted transactions and assets are exposed to foreign currency risk. The Company monitors its foreign currency exposures daily to maximize the overall effectiveness of its foreign currency hedge positions. Principal currencies hedged include the Euro, British pound, and Australian dollar. Options used to hedge a portion of forecasted international intercompany revenue for up to one year in the future are designated as cash flow hedging instruments. Forwards not designated as hedging instruments under SFAS 133 are also used to hedge the impact of the variability in exchange rates on accounts receivable and collections denominated in certain foreign currencies.

For options designated as cash flow hedges, changes in the time value are excluded from the assessment of hedge effectiveness. Hedge ineffectiveness, determined in accordance with SFAS 133, had no impact on earnings for the three months ended February 28, 2001. For the three months ended February 28, 2001, foreign currency loss included a net loss of \$0.7 million for changes in the time value of options for cash flow hedges.

## 6. New Accounting Pronouncement

In December 1999, The Securities and Exchange Commission (SEC) issued Staff Accounting Bulletin 101, "Revenue Recognition in Financial Statements" (SAB 101), which summarizes certain of the SEC's views in applying U.S. generally accepted accounting principles to revenue recognition in financial statements. SAB 101, as amended, must be adopted no later than the fourth fiscal quarter of fiscal years beginning after December 15, 1999. In October 2000, the SEC issued guidance concerning the application of SAB 101 to particular transactions. The Company will adopt SAB 101 in the fourth quarter of fiscal 2001. The adoption of SAB 101 is not expected to have a material impact on the Company's consolidated financial position or results of operations.

## 7. Segment Information

In December 2000, the Company began conducting business through three separate operating units and a supporting research and business development unit in order to enhance the Company's opportunities in the e-business marketplace. The first operating unit conducts business as the Progress Company and provides the Progress 4GL, WebSpeed and the Progress RDBMS products and services. The second operating unit, Sonic Software Corporation, is a provider of E-Business messaging software and services. The third operating unit, NuSphere Corporation, provides enhanced open source database software and services. PSC Labs has responsibility for research and new business development activities.

Segment information is presented in accordance with SFAS 131, "Disclosures about Segments of an Enterprise and Related Information." This standard is based on a management approach, which requires segmentation based upon the Company's internal organization and disclosure of revenue and operating income based upon internal accounting methods. Assets are not allocated to segments for internal reporting purposes.

Based upon the aggregation criteria for segment reporting, the Company has two reportable segments: E-Business Solutions and Databases, which includes the Progress Company, NuSphere and PSC Labs, and E-Business Messaging, which includes Sonic Software. The Company has not presented the reportable segments discussed above for the three months ended February 29, 2000 as the Company did not launch these operating units until fiscal 2001 and it is impractical to restate prior periods on this basis. The following table sets forth the Company's revenue and income from operations from the Company's reportable segments for the three months ended February 2001:

Three Months Ended February 28, 2001:	E-Business Solutions and Databases -----	E-Business Messaging -----	Elimination -----	Total -----
Revenue	\$59,587	\$ 829	\$(177)	\$60,239
Income (loss) from operations	\$ 7,404	\$(5,770)	\$(177)	\$ 1,457

Total revenue for the SonicMQ product line, generated by both segments, was \$1.1 million in the first quarter of fiscal 2001 as compared to \$0.4 million in the first quarter of fiscal 2000.



## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

## CAUTIONARY STATEMENT

The Private Securities Litigation Reform Act of 1995 contains certain safe harbors regarding forward-looking statements. This Form 10-Q, and other information provided by the Company or statements made by its directors, officers or employees from time to time, may contain "forward-looking" information which involves risks and uncertainties. Actual future results may differ materially. Statements indicating that the Company "expects," "estimates," "believes," "is planning" or "plans to" are forward-looking, as are other statements concerning future financial results, product offerings or other events that have not yet occurred. There are several important factors which could cause actual results or events to differ materially from those anticipated by the forward-looking statements. Such factors are described in greater detail below under the heading "Factors That May Affect Future Results" and include, but are not limited to, the receipt and shipment of new orders, the timely release of enhancements to the Company's products, the growth rates of certain market segments including E-Business messaging, the positioning of the Company's products in those market segments, market acceptance of the application service provider distribution model, variations in the demand for professional services and technical support, pricing pressures and the competitive environment in the software industry, business and consumer use of the Internet, and the Company's ability to penetrate international markets and manage its international operations. Although the Company has sought to identify the most significant risks to its business, the Company cannot predict whether, or to what extent, any of such risks may be realized, nor can there be any assurance that the Company has identified all possible issues which the Company might face. The Company undertakes no obligation to update any forward-looking statements it makes.

## RESULTS OF OPERATIONS

The Company develops, markets and supports application development, deployment and integration software. Its core product line, Progress, is composed primarily of the Progress ProVision, Progress RDBMS, Progress WebSpeed, Progress Open AppServer and Progress DataServers products. In October 2000, the Company began shipping the latest major enhancement to the Progress product line, Progress Version 9.1. The Company began commercial shipments of SonicMQ, an E-Business messaging server, in December 1999 and shipped the latest release, SonicMQ 3.0, in December 2000. Software license revenue historically has been generated primarily from internally developed products. Geographic expansion in overseas markets has been achieved through a combination of establishing new offices in new markets and the acquisition of the Progress-related assets of certain distributors.

In December 2000, the Company began conducting business through three separate operating units and a supporting research and business development unit in order to enhance the Company's opportunities in the e-business marketplace. The first operating unit conducts business as the Progress Company and provides the Progress 4GL, WebSpeed and the Progress RDBMS products and services. The second operating unit, Sonic Software Corporation, is a provider of E-Business messaging software and services. The third operating unit, NuSphere Corporation, provides enhanced open source database software and services. PSC Labs has responsibility for research and new business development activities.

The following table sets forth certain income and expense items as a percentage of total revenue, and the percentage change in the dollar amounts of such items, for the three months ended February 28, 2001 and February 29, 2000.

	Percentage of Total Revenue		Period-to-Period Change
	Three Months Ended		Three Months 2001 Compared To 2000
	Feb. 28, 2001	Feb. 29, 2000	
Revenue:			
Software licenses	36%	46%	(34)%
Maintenance and services	64	54	(1)
	---	---	
Total revenue	100	100	(16)
	---	---	
Costs and expenses:			
Cost of software licenses	4	4	(14)
Cost of maintenance and services	22	20	(8)
Sales and marketing	43	36	(1)
Product development	17	14	0
General and administrative	12	10	0
	---	---	
Total costs and expenses	98	84	(3)
	---	---	
Income from operations	2	16	(87)
	---	---	
Other income, net	3	2	(16)
	---	---	
Income before provision for income taxes	5	18	(78)
Provision for income taxes	2	6	(79)
	---	---	
Net income	3%	12%	(78)%
	===	===	

The Company's total revenue decreased 16% from \$72.1 million in the first quarter of fiscal 2000 to \$60.2 million in the first quarter of fiscal 2001. Total revenue would have decreased by 12% in the first quarter of fiscal 2001 from the first quarter of fiscal 2000 if exchange rates had been constant in the first quarter of fiscal 2001 as compared to the exchange rates in effect in the first quarter of fiscal 2000. Total revenue derived from the SonicMQ product line was \$1.1 million in the first quarter of fiscal 2001 as compared to \$0.4 million in the first quarter of fiscal 2000. Revenue from NuSphere was not significant as this organization is currently in the development stage.

Software license revenue decreased 34% from \$33.2 million in the first quarter of fiscal 2000 to \$21.8 million in the first quarter of fiscal 2001. The decrease in software license revenue in the first quarter of fiscal 2001 was primarily due to a decline in demand from end user customers as well as Independent Software Vendors (ISVs), companies which have written software applications utilizing Progress Software technology and which resell the Company's products in conjunction with the sale of their applications. In addition, the Company's license revenue was adversely affected by the strong U.S. dollar, especially relative to the euro and the Australian dollar.

Maintenance and services revenue decreased 1% from \$38.9 million in the first quarter of fiscal 2000 to \$38.4 million in the first quarter of fiscal 2001. The decrease in maintenance and services revenue was primarily the result of a small decline in consulting and education revenue, partially offset by growth in the Company's installed customer base and renewal of maintenance contracts. The decline in consulting revenue was primarily due to delays in new engagements, fewer projects as a result of lower license revenue and a slower overall market for professional services, especially in North America, in the first quarter of fiscal 2001 as compared to the first quarter of fiscal 2000.

Total revenue generated in markets outside North America decreased 21% from \$45.5 million in the first quarter of fiscal 2000 to \$35.7 million in the first quarter of fiscal 2001 and represented 59% of total revenue in the first quarter of fiscal 2001 as compared to 63% in the first quarter of fiscal 2000. Total revenue generated in markets outside North America would have represented 61% of total revenue in the first quarter of fiscal 2001 if exchange rates had been constant in the first quarter of fiscal 2001 as compared to the exchange rates in effect in the first quarter of fiscal 2000.

Total revenue decreased from the comparable quarter one year ago in all regions. Fiscal 2001 percentage revenue declines from the first quarter of fiscal 2000 were 20% in Europe, Middle East and Africa (EMEA), 34% in Latin America, 12% in Asia Pacific and 8% in North America. EMEA and Asia Pacific



revenue was the most significantly impacted by the strong U.S. dollar in the first quarter of fiscal 2001. Revenue from EMEA and Asia Pacific would have decreased 13% and 2%, respectively, if exchange rates had been constant in the first quarter of fiscal 2001 as compared to the exchange rates in effect in the first quarter of fiscal 2000.

The Company is planning for total revenue growth for fiscal 2001 of around 5%, with more of the growth occurring in the second half of the year. The Company's expectation of revenue growth for the remainder of fiscal 2001 is based on an expected stabilization of revenue from the ISV channel, the Company's plans to generate additional software license and service revenue by focusing more of its selling efforts on the end-user community, projected continued growth of new products, continued health of the global economy and no further strengthening of the U.S. dollar. However, there can be no assurance that the Company will be successful in achieving its forecasts and plans or that other factors will not negatively impact its revenue.

Cost of software licenses consists primarily of cost of product media, documentation, duplication, packaging, royalties and amortization of capitalized software costs. Cost of software licenses decreased 14% from \$2.8 million in the first quarter of fiscal 2000 to \$2.4 million in the first quarter of fiscal 2001, but increased as a percentage of software license revenue from 8% to 11%. The dollar decrease was due to lower software license revenue and lower documentation costs, partially offset by higher royalty expense for products and technologies licensed from third parties. The percentage increase was due to fixed costs, including certain distribution costs and amortization expense, being spread over a smaller base of license revenue. Cost of software licenses as a percentage of software license revenue varies depending upon the relative product mix in a given period.

Cost of maintenance and services consists primarily of costs of providing customer technical support, education and consulting. Cost of maintenance and services decreased 8% from \$14.0 million in the first quarter of fiscal 2000 to \$12.9 million in the first quarter of fiscal 2001 and decreased as a percentage of maintenance and services revenue from 36% to 34%. The margin percentage improvement in the first quarter of fiscal 2001 as compared to the first quarter of fiscal 2000 was primarily due to a slight improvement in consulting margins and maintenance revenue increasing while the related technical support costs decreased due to lower headcount. The dollar decrease was also due to lower headcount in the professional services group and decreased usage of third-party contractors for service engagements.

Sales and marketing expenses decreased 1% from \$26.0 million in the first quarter of fiscal 2000 to \$25.8 million in the first quarter of fiscal 2001, but increased as a percentage of total revenue from 36% to 43%. The dollar decrease in sales and marketing expenses was due to a decrease in the level of discretionary marketing spending for trade shows, advertising campaigns, direct mail solicitations and other events and lower amounts for incentive compensation, partially offset by an increase in headcount in the sales, sales support and marketing staff. The percentage increase was primarily due to the decline in revenue without a commensurate change in sales and marketing expenses.

Product development expenses remained approximately the same in the first quarter of fiscal 2001 as compared to the first quarter of fiscal 2000, but increased as a percentage of total revenue from 14% to 17%. The percentage increase was primarily due to the decline in revenue without a commensurate change in product development expenses. The major product development efforts in the first quarter of fiscal 2001 primarily related to the development and enhancement of new products such as SonicMQ and the next release of the Company's principal product line, Progress Version 9.1. The Company capitalized \$0.4 million of software development costs in the first quarter of fiscal 2000, which represented 4% of total product development costs. The Company did not capitalize any software development costs in the first quarter of fiscal 2001. The decrease in amounts capitalized was due to the timing and stage of development of significant projects that qualify for capitalization under the Company's software capitalization policy.

General and administrative expenses include the costs of the finance, human resources, legal, information systems and administrative departments of the Company and amortization of goodwill. General and administrative expenses remained the same in the first quarter of fiscal 2001 as compared to the first quarter of fiscal 2000, but increased as a percentage of total revenue from 10% to 12%. The percentage

increase was primarily due to the decline in revenue without a commensurate change in general and administrative expenses.

Income from operations decreased as a percentage of total revenue from 16% in the first quarter of fiscal 2000 to 2% in the first quarter of fiscal 2001. The dollar decrease and the decrease in operating income as a percentage of revenue was primarily due to lower revenue during the period and the Company's continued investment in new businesses and initiatives. If the Company is able to meet its forecasted revenue target and expenses occur as planned, the Company expects operating margins to be around 12% for fiscal 2001 as a whole.

Other income decreased 16% from \$1.7 million in the first quarter of fiscal 2000 to \$1.4 million in the first quarter of fiscal 2001. The decrease was primarily due to larger foreign currency losses in the first quarter of fiscal 2001 as compared to the first quarter of fiscal 2000, partially offset by higher interest income. The increase in interest income in the first quarter of fiscal 2001 as compared to the first quarter of fiscal 2000 was due to higher average interest earned on invested cash balances. The Company expects its average earned interest on invested cash balances to be lower for the remainder of fiscal 2001 due to recent market reductions in interest rates.

The Company's effective tax rate was 31% in the first quarter of fiscal 2001 and 32% in the first quarter of fiscal 2000 and was based upon the estimated effective tax rate for the full fiscal year.

#### LIQUIDITY AND CAPITAL RESOURCES

At the end of the first quarter of fiscal 2001, the Company's cash and short-term investments totaled \$162.9 million. The increase of \$4.8 million since the end of fiscal 2000 resulted primarily from cash generated from operations and proceeds from stock issuances under the Company's stock purchase plan and exercises of stock options, partially offset by capital expenditures and common stock repurchases.

In the first quarter of fiscal years 2001 and 2000, the Company generated \$4.2 million and \$13.8 million, respectively, in cash from operations. The decrease in cash generated from operations in the first quarter of fiscal 2001 was primarily due to lower net income and a smaller increase in the deferred revenue balance.

Accounts receivable increased by \$0.8 million from the end of fiscal 2000, while sequential quarterly revenue decreased. As a result, accounts receivable days sales outstanding (DSO) increased to 75 days at the end of the first quarter of fiscal 2001 as compared to 67 days at the end of fiscal 2000 and 63 days at the end of the first quarter of fiscal 2000. The Company targets a DSO range of 55 to 75 days. The increase in DSO was attributable to a higher percentage of renewal maintenance billings and a slight increase in accounts over 90 days past due as compared to amounts in the fourth quarter of fiscal 2000. The Company expects its DSO to decrease in the second quarter of fiscal 2001.

The Company purchased \$2.1 million of property and equipment in the first three months of fiscal 2001 and \$2.4 million in the first three months of fiscal 2000. The purchases consisted primarily of computer equipment and software. The Company financed these purchases primarily from cash generated from operations.

The Company purchased and retired approximately 85,000 shares of its common stock for \$1.3 million in the first three months of fiscal 2001 as compared to 124,500 shares for \$2.9 million in the first three months of fiscal 2000. The Company financed these purchases primarily from cash generated from operations.

In September 2000, the Board of Directors authorized, for the period October 1, 2000 through September 30, 2001, the purchase of up to 10,000,000 shares of the Company's common stock, at such times as the Company deems such purchases to be an effective use of cash. Shares that are repurchased may be used for various purposes including the issuance of shares pursuant to the Company's stock option and purchase plans. At February 28, 2001, approximately 9,500,000 shares of common stock remained available for repurchase under this authorization.

The Company is subject to various legal proceedings and claims, either asserted or unasserted, which arise in the ordinary course of business. While the outcome of these claims cannot be predicted with certainty, management does not believe that the outcome of any of these legal matters will have a material adverse effect on the Company's consolidated financial position or results of operations.

The Company believes that existing cash balances together with funds generated from operations will be sufficient to finance the Company's operations and meet its foreseeable cash requirements (including planned capital expenditures, lease commitments and other long-term obligations) through at least the next twelve months.

#### NEW ACCOUNTING PRONOUNCEMENT

In December 1999, The Securities and Exchange Commission (SEC) issued Staff Accounting Bulletin 101, "Revenue Recognition in Financial Statements" (SAB 101), which summarizes certain of the SEC's views in applying U.S. generally accepted accounting principles to revenue recognition in financial statements. SAB 101, as amended, must be adopted no later than the fourth fiscal quarter of fiscal years beginning after December 15, 1999. In October 2000, the SEC issued guidance concerning the application of SAB 101 to particular transactions. The Company will adopt SAB 101 in the fourth quarter of fiscal 2001. The adoption of SAB 101 is not expected to have a material impact on the Company's consolidated financial position or results of operations.

#### FACTORS THAT MAY AFFECT FUTURE RESULTS

The Company operates in a rapidly changing environment that involves certain risks and uncertainties, some of which are beyond the Company's control. The following discussion highlights some of these risks.

#### FLUCTUATIONS IN REVENUE AND QUARTERLY RESULTS

The Company may experience significant fluctuations in future quarterly operating results that may be caused by many factors. Some of these factors include changes in demand for the Company's products, introduction, enhancement or announcement of products by the Company and its competitors, market acceptance of new products, the growth rates of certain market segments including E-Business messaging, size and timing of significant orders, budgeting cycles of customers, mix of distribution channels, mix of products and services sold, mix of international and North American revenues, fluctuations in currency exchange rates, changes in the level of operating expenses, changes in the Company's sales incentive plans, customer order deferrals in anticipation of new products announced by the Company or its competitors and general economic conditions. Revenue forecasting is uncertain, in large part, because the Company generally ships its products shortly after receipt of orders. Most of the Company's expenses are relatively fixed, including costs of personnel and facilities, and are not easily reduced. Thus, an unexpected reduction in the Company's revenue, or a decrease in the rate of growth of such revenue, would have a material adverse effect on the profitability of the Company.

#### PRODUCTS

The Company believes that the Progress product set and SonicMQ have features and functionality that enable the Company to compete effectively with other vendors of application development and deployment products, but ongoing enhancements to these product lines will be required to enable the Company to maintain its competitive position. There can be no assurance that the Company will be successful in developing and marketing enhancements to its products on a timely basis, or that the enhancements will adequately address the changing needs of the marketplace. Delays in the release of enhancements could have a material adverse effect on the Company's business, financial condition and operating results.

The Company has derived most of its revenue from its core product line, Progress, and other products that complement Progress and are generally licensed only in conjunction with Progress. Accordingly, the Company's future results depend on continued market acceptance of Progress and any factor adversely

affecting the market for Progress could have a material adverse effect on the Company's business and its financial results.

The Company hopes that SonicMQ and other new products and services will contribute positively to the Company's future results. The market for E-Business messaging products, other Internet business-to-business products and application integration software is highly competitive. Many potential customers have made significant investments in proprietary or internally developed systems and would incur significant costs in switching to third-party products. Global e-commerce and online exchange of information on the Internet and other similar open wide area networks continue to evolve. There can be no assurance that the Company's products will be successful in penetrating these new and evolving markets.

#### RAPID TECHNOLOGICAL CHANGE

Overlaying the risks associated with the Company's existing products and enhancements are ongoing technological developments and rapid changes in customer requirements. The Company's future success will depend upon its ability to develop and introduce in a timely manner new products that take advantage of technological advances and respond to new customer requirements. The Company is currently developing new products intended to help organizations meet the future needs of application developers. The development of new products is increasingly complex and uncertain, which increases the risk of delays. There can be no assurance that the Company will be successful in developing new products incorporating new technology on a timely basis, or that its new products will adequately address the changing needs of the marketplace.

#### DISTRIBUTION CHANNELS AND NEW MARKETS

Future results also depend upon the Company's continued successful distribution of its products through its ISV channel and may be impacted by downward pressure on pricing, which may not be offset by increases in volume. ISVs utilize technology from the Company to create their applications and resell the Company's products along with their own applications. During fiscal 2000 and the first quarter of fiscal 2001, revenue from the ISV channel decreased as compared to the previous period. If this negative revenue trend were to continue throughout the remainder of fiscal 2001, the Company's business and operating results would be adversely affected. Any other adverse effect on the ISVs' business related to competition, pricing and other factors could also have a material adverse effect on the Company's business, financial condition and operating results.

The Company expects to devote significant resources to enable its ISVs to move their applications to the Internet and the Application Service Provider (ASP) distribution model by providing a combination of technology, professional services and partnerships. The ASP distribution model enables ISVs to rent their business applications to end-user organizations over the Internet or through other thin-client technologies. The ASP market is new and evolving. There can be no assurance that the ASP model will become a viable market for business applications or that the Company will be successful in penetrating this new market.

In June 2000, the Company announced the formation of NuSphere, a company focused on the open source database market. NuSphere has and continues to develop a set of products and services for the MySQL open source database. The success of an open source business model, which gives customers the right to freely copy and distribute software, is unproven. Few open source software products have gained widespread commercial acceptance partly due to the lack of viable open source industry participants to offer adequate service and support on a long-term basis. In addition, open source vendors are not able to provide industry standard warranties and indemnities for their products, since these products have been developed largely by independent parties over whom open source vendors exercise no control or supervision. There can be no assurance that NuSphere will be successful in building a sustainable business model or that MySQL will attain sufficient market acceptance to support such a business.

## COMPETITION

The Company experiences significant competition from a variety of sources with respect to the marketing and distribution of its products. Many of these competitors have greater financial, marketing or technical resources than the Company and may be able to adapt more quickly to new or emerging technologies and changes in customer requirements or to devote greater resources to the promotion and sale of their products than can the Company. Increased competition could make it more difficult for the Company to maintain its market presence. The marketplace for new products is intensely competitive and characterized by low barriers to entry. As a result, new competitors possessing technological, marketing or other competitive advantages may emerge and rapidly acquire market share.

In addition, current and potential competitors may make strategic acquisitions or establish cooperative relationships among themselves or with third parties, thereby increasing their ability to deliver products that better address the needs of the Company's prospective customers. Current and potential competitors also may be more successful than the Company in having their products or technologies widely accepted. There can be no assurance that the Company will be able to compete successfully against current and future competitors and its failure to do so would have a material adverse effect upon the Company's business, prospects, financial condition and operating results.

## INTERNATIONAL OPERATIONS

Approximately 57% of the Company's total revenue in the first quarter of fiscal 2001 was attributable to international sales made through its subsidiaries. Because a majority of the Company's total revenue is derived from such international operations which are primarily conducted in foreign currencies, changes in the value of these foreign currencies relative to the U.S. dollar may affect the Company's results of operations and financial position. The Company engages in certain currency-hedging transactions intended to reduce the effect of fluctuations in foreign currency exchange rates on the Company's results of operations. However, there can be no assurance that such hedging transactions will materially reduce the effect of fluctuation in foreign currency exchange rates on such results. If for any reason exchange or price controls or other restrictions on the conversion of foreign currencies were imposed, the Company's business could be adversely affected.

Other potential risks inherent in the Company's international business generally include longer payment cycles, greater difficulties in accounts receivable collection, unexpected changes in regulatory requirements, export restrictions, tariffs and other trade barriers, difficulties in staffing and managing foreign operations, political instability, reduced protection for intellectual property rights in some countries, seasonal reductions in business activity during the summer months in Europe and certain other parts of the world and potentially adverse tax consequences. Any one of these factors could adversely impact the success of the Company's international operations. There can be no assurance that one or more of such factors will not have a material adverse effect on the Company's future international operations, and, consequently, on the Company's business, financial condition and operating results.

## HIRING AND RETENTION OF EMPLOYEES

The Company's future success will depend in large part upon its ability to attract and retain highly skilled technical, managerial and marketing personnel. Competition for such personnel in the software industry is intense. There can be no assurance that the Company will continue to be successful in attracting and retaining the personnel it requires to successfully develop new and enhanced products and to continue to grow and operate profitably.

## INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS

The Company's success is heavily dependent upon its proprietary software technology. The Company relies principally on a combination of contract provisions and copyright, trademark, patent and trade secret laws to protect its proprietary technology. Despite the Company's efforts to protect its proprietary rights,



unauthorized parties may attempt to copy aspects of the Company's products or to obtain and use information that the Company regards as proprietary. Policing unauthorized use of the Company's products is difficult. There can be no assurance that the steps taken by the Company to protect its proprietary rights will be adequate to prevent misappropriation of its technology or independent development by others of similar technology.

In addition, litigation may be necessary in the future to enforce the Company's intellectual property rights, to protect the Company's trade secrets, to determine the validity and scope of the proprietary rights of others, or to defend against claims of infringement. Although the Company believes that its products and technology do not infringe on any existing proprietary rights of others, there can be no assurance that third parties will not assert infringement claims in the future. Such litigation could result in substantial costs and diversion of resources and could have a material adverse effect on the Company's business, financial condition and operating results.

#### THIRD-PARTY TECHNOLOGY

The Company also utilizes certain technology which it licenses from third parties, including software which is integrated with internally developed software and used in the Company's products to perform key functions. There can be no assurance that functionally similar technology will continue to be available on commercially reasonable terms in the future.

#### STOCK PRICE VOLATILITY

The market price of the Company's common stock, like that of other technology companies, is highly volatile and is subject to wide fluctuations in response to quarterly variations in operating results, announcements of technological innovations or new products by the Company or its competitors, changes in financial estimates by securities analysts or other events or factors. The Company's stock price may also be affected by broader market trends unrelated to the Company's performance.

#### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The Company is exposed to a variety of risks, including changes in interest rates affecting the return on its investments and foreign currency fluctuations. The Company has established policies and procedures to manage its exposure to fluctuations in interest rates and foreign currency exchange.

Exposure to market rate risk for changes in interest rates relates to the Company's investment portfolio. The Company has not used derivative financial instruments in its investment portfolio. The Company places its investments with high-quality issuers and has policies limiting, among other things, the amount of credit exposure to any one issuer. The Company limits default risk by purchasing only investment-grade securities. The Company's investments are all fixed-rate instruments. In addition, the Company has classified all its debt securities as available for sale. This classification reduces the income statement exposure to interest rate risk. Based on a hypothetical ten percent adverse movement in interest rates, the potential losses in future earnings, fair value of risk-sensitive instruments, and cash flows are immaterial, although the actual effects may differ materially from the hypothetical analysis.

The Company has entered into foreign exchange option and forward contracts to hedge certain transactions of selected foreign currencies (mainly in Europe and Asia Pacific) against fluctuations in exchange rates. The Company has not entered into foreign exchange option and forward contracts for speculative or trading purposes. The Company's accounting policies for these contracts are based on the designation of the contracts as hedging transactions. The criteria the Company uses for designating a contract as a hedge include the contract's effectiveness in risk reduction and matching of derivative instruments to the underlying transactions. Market value increases and decreases on the foreign exchange option and forward contracts are recognized in income in the same period as gains and losses on the underlying transactions. The Company operates in certain countries where there are limited forward currency exchange markets and thus the Company has unhedged transaction exposures in these currencies. The Company generally does not hedge the net assets of its international subsidiaries. Based on a hypothetical ten percent adverse

movement in all foreign currency exchange rates, the Company's annual revenue would be adversely affected by approximately 6% and the Company's annual net income would be adversely affected by approximately 15% (excluding any offsetting positive impact from the Company's ongoing hedging programs), although the actual effects may differ materially from the hypothetical analysis.

PART II. OTHER INFORMATION

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

a) Exhibits

10.3 Progress Software Corporation 401(k) Plan

b) Reports on Form 8-K

No reports on Form 8-K were filed during the quarter ended February 28, 2001.

## SIGNATURES

Pursuant to the requirements 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.

PROGRESS SOFTWARE CORPORATION  
(Registrant)

Dated: April 12, 2001

/s/ Joseph W. Alsop  
-----

Joseph W. Alsop  
Chief Executive Officer  
(Principal Executive Officer)

Dated: April 12, 2001

/s/ Norman R. Robertson  
-----

Norman R. Robertson  
Senior Vice President, Finance and  
Administration and Chief Financial  
Officer (Principal Financial  
Officer)

Dated: April 12, 2001

/s/ David H. Benton, Jr.  
-----

David H. Benton, Jr.  
Vice President and Corporate Controller  
(Principal Accounting Officer)

PROGRESS SOFTWARE CORPORATION 401(k) PLAN  
(January 1, 1996 Restatement)

Fidelity Management Trust Company, its affiliates and employees may not provide you with legal or tax advice in connection with the execution of this document. It should be reviewed by your attorney and/or accountant prior to execution.

CORPORATE plan for RETIREMENT(TM)  
VOLUME SUBMITTER

PLAN DOCUMENT SYSTEMS(TM)

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## PREAMBLE

The Progress Software Corporation 401(k) Plan, originally effective as of September 1, 1991, is hereby amended and restated in its entirety. The Plan, as amended and restated hereby, is intended to qualify as a profit-sharing plan under Section 401(a) of the Code, and includes a cash or deferred arrangement that is intended to qualify under Section 401(k) of the Code. The Plan is maintained for the exclusive benefit of eligible employees and their beneficiaries.

Notwithstanding any other provision of the Plan to the contrary, a Participant's vested interest in his Separate Account under the Plan on and after the effective date of this amendment and restatement shall be not less than his vested interest in his account on the day immediately preceding the effective date. In addition, notwithstanding any other provision of the Plan to the contrary, the forms of payment and other Plan provisions that were available under the Plan immediately prior to the later of the effective date of this amendment and restatement or the date this amendment and restatement is adopted and that may not be eliminated under Section 411(d) (6) of the Code shall continue to be available to Participants who had an account under the Plan on the day immediately preceding the later of the effective date or the date this amendment and restatement is adopted.

ARTICLE I  
DEFINITIONS

1.1 Plan Definitions

As used herein, the following words and phrases have the meanings hereinafter set forth, unless a different meaning is plainly required by the context:

The "Administrator" means the Sponsor unless the Sponsor designates another person or persons to act as such.

An "After-Tax Contribution" means any after-tax employee contribution made by a Participant as may be permitted under Article V.

The "Beneficiary" of a Participant means the person or persons entitled under the provisions of the Plan to receive distribution hereunder in the event the Participant dies before receiving distribution of his entire interest under the Plan.

The "Code" means the Internal Revenue Code of 1986, as amended from time to time. Reference to a section of the Code includes such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section.

The "Compensation" of a Participant for any period means the wages as defined in Section 3401(a) of the Code, determined without regard to any rules that limit compensation included in wages based on the nature or location of the employment or services performed, and all other payments made to him for such period for services as an Employee for which his Employer is required to furnish the Participant a written statement under Sections 6041 (d), 6051 (a) (3), and 6052 of the Code, and excluding reimbursements or other expense allowances, fringe benefits, moving expenses, deferred compensation, and welfare benefits, but determined prior to any exclusions for amounts deferred under Section 125, 402(e) (3), 402(h) (1) (B), 403(b), or 457(b) of the Code or for certain contributions described in Section 414(h) (2) of the Code that are picked up by the employing unit and treated as employer contributions.

Notwithstanding the foregoing, Compensation shall not include the following:

- overtime pay
- the value of any qualified or non-qualified stock option granted to the Participant by his Employer to the extent such value is includible in the Participant's taxable income.

In no event, however, shall the Compensation of a Participant taken into account under the Plan for any Plan Year exceed (1) \$200,000 for Plan Years beginning prior to January 1, 1994, or (2) \$150,000 for Plan Years beginning on or after January 1, 1994 (subject to adjustment annually as provided in Section 401(a) (17) (B) and Section 415 (d) or the Code; provided, however, that the dollar increase in effect on January 1 of any calendar year, if any, is effective for Plan Years beginning in such calendar year). If the Compensation of a Participant is determined over a period of time that contains fewer than 12 calendar months, then the annual compensation limitation described above shall be adjusted with respect to that Participant by multiplying the annual compensation limitation in effect for the Plan Year by a fraction the numerator of which is the number of full months in the period and the denominator of which is 12; provided, however, that no proration is required for a Participant who is covered under the Plan for less than one full

Plan Year if the formula for allocations is based on Compensation for a period of at least 12 months. In determining the Compensation, for purposes of applying the annual compensation limitation described above, of a Participant who is a five percent owner or among the ten Highly Compensated Employees receiving the greatest Compensation for the Plan Year, the Compensation of the Participant's spouse and of his lineal descendants who have not attained age 19 as of the close of the Plan Year shall be included as Compensation of the Participant for the Plan Year. If as a result of applying the family aggregation rule described in the preceding sentence the annual compensation limitation would be exceeded, the limitation shall be prorated among the affected family members in proportion to each member's Compensation as determined prior to application of the family aggregation rules.

A "Contribution Period" means the period specified in Article VI for which Employer Contributions shall be made.

An "Eligible Employee" means any Employee who has met the eligibility requirements of Article III to have Tax-Deferred Contributions made to the Plan on his behalf.

The "Eligibility Service" of any employee means the period or periods of service credited to him under the provisions of Article II for purposes of determining his eligibility to participate in the Plan as may be required under Article III or Article VI.

An "Employee" means any employee of an Employer other than a leased employee or an employee who is covered by a collective bargaining agreement that does not specifically provide for coverage under the Plan.

An "Employer" means the Sponsor and any entity which has adopted the Plan as may be provided under Article XX.

An "Employer Contribution" means the amount, if any, than an Employer contributes to the Plan as may be provided under Article VI or Article XXII.

An "Enrollment Date" means the first day of each calendar month of the Plan Year.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time. Reference to a section of ERISA includes such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section.

The "General Fund" means a Trust Fund maintained by the Trustee as required to hold and administer any assets of the Trust that are not allocated among any separate Investment Funds as may be provided in the Plan or the Trust Agreement. No General Fund shall be maintained if all assets of the trust are allocated among separate Investment Funds.

A "Highly Compensated Employee" means an Employee or former Employee who is a highly compensated active employee or highly compensated former employee as defined hereunder.

A "highly compensated active employee" includes any Employee who performs services for an Employer during the determination year and who (i) was a five percent owner at any time during the determination year or the look back year, (ii) received compensation from an Employer during the look back year in excess of \$75,000 (subject to adjustment annually at the same time and in the same manner as under Section 415(d) of the Code), (iii) was in the top paid group of employees for the look back year and received compensation from an Employer during the look

back year in excess of \$50,000 (subject to adjustment annually at the same time and in the same manner as under Section 415(d) of the Code), (iv) was an officer of an Employer during the look back year and received compensation during that year in excess of 50 percent of the dollar limitation in effect for that year under Section 415(b) (1) (A) of the Code or, if no officer received compensation in excess of that amount for the look back year or the determination year, received the greatest compensation for the look back year of any officer, or (v) was one of the 100 employees paid the greatest compensation by an Employer for the determination year and would be described in (ii), (iii), or (iv) above if the term "determination year" were substituted for "look back year".

A "highly compensated former employee" includes any Employee who separated from service from an Employer and all Related Companies (or is deemed to have separated from service from an Employer and all Related Companies) prior to the determination year, and was a highly compensated active employee for either the separation year or any determination year ending on or after the date the Employee attains age 55.

The determination of who is a Highly Compensated Employee hereunder, including determinations as to the number and identity of employees in the top paid group, the 100 employees receiving the greatest compensation from an Employer, the number of employees treated as officers, and the compensation considered, shall be made in accordance with the provisions of Section 414 (q) of the Code and regulations issued thereunder. For purposes of this definition, the following terms have the following meanings:

- (a) The "determination year" means the Plan Year or, if the Administrator makes the election provided in paragraph (b) below, the period of time, if any, which extends beyond the look back year and ends on the last day of the Plan Year for which testing is being performed (the "lag period"). If the lag period is less than 12 months long, the dollar amounts specified in (ii), (iii), and (iv) above shall be prorated based upon the number of months in the lag period.
- (b) The "look back year" means the 12-month period immediately preceding the determination year; provided, however, that the Administrator may elect instead to treat the calendar year ending with or within the determination year as the "look back year".

An "Hour of Service" with respect to a person means each hour, if any, that may be credited to him in accordance with the provisions of Article II.

An "Investment Fund" means any separate investment Trust Fund maintained by the Trustee as may be provided in the Plan or the Trust Agreement or any separate investment fund maintained by the Trustee, to the extent that there are Participant Sub Accounts under such funds, to which assets of the Trust may be allocated and separately invested.

A Matching Contribution" means any Employer Contribution made to the Plan on account of a Participant's Tax-Deferred Contributions as provided in Article VI.

The "Normal Retirement Date" of an employee means the date he attains age 65.

A "Participant" means any person who has a Separate Account in the Trust.

The "Plan" means Progress Software Corporation 401(k) Plan, as from time to time in effect.

A "Plan Year" means the 12 consecutive month period ending December 31.

A "Profit-Sharing Contribution" means any Employer Contribution made to the Plan as provided in Article VI.

A "Related Company" means any corporation or business, other than an Employer, which would be aggregated with an Employer for a relevant purpose under Section 414 of the Code.

A "Rollover Contribution" means any rollover contribution to the Plan made by a Participant as may be permitted under Article V.

A "Separate Account" means the account maintained by the Trustee in the name of a Participant that reflects his interest in the Trust and any Sub-Accounts maintained thereunder, as provided in Article VIII.

The "Settlement Date" of a Participant means the date on which a Participant's interest under the Plan becomes distributable in accordance with Article XV.

The "Sponsor" means Progress Software Corporation, and any successor thereto.

A "Sub-Account" means any of the individual sub-accounts of a Participant's Separate Account that is maintained as provided in Article VIII.

A "Tax-Deferred Contribution" means the amount contributed to the Plan on a Participant's behalf by his Employer in accordance with his reduction authorization executed pursuant to Article IV.

The "Trust" means the trust maintained by the Trustee under the Trust Agreement.

The "Trust Agreement" means the agreement entered into between the Sponsor and the Trustee relating to the holding, investment, and reinvestment of the assets of the Plan, together with all amendments thereto.

The "Trustee" means the trustee or any successor trustee which at the time shall be designated, qualified, and acting under the Trust Agreement. The Sponsor may designate a person or persons other than the Trustee to perform any responsibility of the Trustee under the Plan, other than trustee responsibilities as defined in Section 405 (c) (3) of ERISA, and the Trustee shall not be liable for the performance of such person in carrying out such responsibility except as otherwise provided by ERISA. The term Trustee shall include any delegate of the Trustee as may be provided in the Trust Agreement.

A "Trust Fund" means any fund maintained under the trust by the Trustee.

A "Valuation Date" means the date or dates designated by the Sponsor and communicated in writing to the Trustee for the purpose of valuing the General Fund and each Investment Fund and adjusting Separate Accounts and Sub-Accounts hereunder, which dates need not be uniform with respect to the General Fund, each Investment Fund, Separate Account, or Sub-Account; provided, however, that the General Fund and each Investment Fund shall be valued and each Separate Account and Sub-Account shall be adjusted no less often than once annually.

The "Vesting Service" of an employee means the period or periods of service credited to him under the provisions of Article II for purposes of determining his vested interest in his Employer Contributions Sub-Account, if Employer Contributions are provided for under either Article VI or Article XXII.

## 1.2 Interpretation

Where required by the context, the noun, verb, adjective, and adverb forms of each defined term shall include any of its other forms. Wherever used herein, the masculine pronoun shall include the feminine, the singular shall include the plural, and the plural shall include the singular.

ARTICLE II  
SERVICE

2.1 Definitions

For purposes of this Article, the following terms have the following meanings:

- (a) The "continuous service" of an employee means the service credited to him in accordance with the provisions of Section 2.3 of the Plan.
- (b) The "employment commencement date" of an employee means the date he first completes an Hour of Service.
- (c) A "maternity/paternity absence" means a person's absence from employment with an Employer or a Related Company because of the person's pregnancy, the birth of the person's child, the placement of a child with the person in connection with the person's adoption of the child, or the caring for the person's child immediately following the child's birth or adoption. A person's absence from employment will not be considered a maternity/paternity absence unless the person furnishes the Administrator such timely information as may reasonably be required to establish that the absence was for one of the purposes enumerated in this paragraph and to establish the number of days of absence attributable to such purpose.
- (d) The "reemployment commencement date" of an employee means the first date following a severance date on which he again completes an Hour of Service.
- (e) The "severance date" of an employee means the earlier of (i) the date on which he retires, dies, or his employment with an Employer and all Related Companies is otherwise terminated, or (ii) the first anniversary of the first date of a period during which he is absent from work with an Employer and all Related Companies for any other reason; provided, however, that if he terminates employment with or is absent from work with an Employer and all Related Companies on account of service with the armed forces of the United States, he shall not incur a severance date if he is eligible for reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 and he returns to work with an Employer or a Related Company within the period during which he retains such reemployment rights.

2.2 Crediting of Hours of Service

A person shall be credited with an Hour of Service for each hour for which he is paid, or entitled to payment, for the performance of duties for an Employer or any Related Company.

2.3 Crediting of Continuous Service

A person shall be credited with continuous service for the aggregate of the periods of time between his employment commencement date or any reemployment commencement date and the severance date that next follows such employment commencement date or reemployment commencement date; provided, however, that an employee who has a reemployment commencement date within the 12-consecutive-month period following the earlier of the first date of his absence or his severance date shall be credited with continuous service for the period between such severance date and reemployment commencement date.



## 2.4 Eligibility Service

There shall be no Eligibility Service credited under the Plan.

## 2.5 Vesting Service

Years of Vesting Service shall be determined in accordance with the following provisions:

- (a) An employee shall be credited with years of Vesting Service equal to his period of continuous service.
- (b) Notwithstanding the provisions of paragraph (a), continuous service completed by an employee prior to a severance date shall not be included in determining the employee's years of Vesting Service unless the employee had a nonforfeitable right to any portion of his Separate Account, excluding that portion of his Separate Account that is attributable to Rollover Contributions, as of the severance date, or the period of time between the severance date and his reemployment commencement date is less than the greater of five years or his period of continuous service determined as of the severance date; provided, however, that solely for purposes of applying this paragraph, if a person is on a maternity/paternity absence beyond the first anniversary of the first day of such absence, his severance date shall be the second anniversary of the first day of such maternity/paternity absence.

## 2.6 Crediting of Service on Transfer or Amendment

Notwithstanding any other provision of the Plan to the contrary, if an Employee is transferred from employment covered under a qualified plan maintained by an Employer or a Related Company for which service is credited based on Hours of Service and computation periods in accordance with Department of Labor Regulations 2530.200 through 2530.203 to employment covered under the Plan or, prior to amendment, the Plan provided for crediting of service on the basis of Hours of Service and computation periods, an affected Employee shall be credited with Vesting Service hereunder equal to:

- (a) the Employee's years of service credited to him under the Hours of Service method before the computation period in which the transfer or the effective date of the amendment occurs, plus
- (b) the greater of (i) the period of service that would be credited to the Employee under the elapsed time method provided hereunder for his employment during the entire computation period in which the transfer or the effective date of the amendment occurs or (ii) the service taken into account under the Hours of Service method for such computation period as of the transfer date or the effective date of the amendment, plus
- (c) the service credited to such Employee under the elapsed time method provided hereunder for the period of time beginning on the day after the last day of the computation period in which the transfer or the effective date of the amendment occurs.

ARTICLE III  
ELIGIBILITY

3.1 Eligibility

Each Employee who was an Eligible Employee immediately prior to the effective date of this amendment and restatement shall continue to be an Eligible Employee. Each other Employee shall become an Eligible Employee as of the Enrollment Date coinciding with or next following the date on which he becomes an Employee.

3.2 Transfers of Employment

If a person is transferred directly from employment with an Employer or with a Related Company in a capacity other than as an Employee to employment as an Employee, he shall become an Eligible Employee as of the later of the date he is so transferred or the date he would have become an Eligible Employee if he had been an Employee for his entire period of employment with the Employer or Related Company.

3.3 Reemployment

If a person who terminated employment with an Employer and all Related Companies is reemployed as an Employee and if he had been an Eligible Employee prior to his termination of employment, he shall again become an Eligible Employee on the date he is reemployed. Otherwise, the eligibility of a person who terminated employment with an Employer and all Related Companies and who is reemployed by an Employer or a Related Company to elect to have Tax-Deferred Contributions made to the Plan on his behalf shall be determined in accordance with Section 3.1 or 3.2.

3.4 Notification Concerning New Eligible Employees

Each Employer shall notify the Administrator as soon as practicable of Employees becoming Eligible Employees as of any date.

3.5 Effect and Duration

Upon becoming an Eligible Employee, an Employee shall be entitled to elect to have Tax-Deferred Contributions made to the Plan on his behalf and shall be bound by all the terms and conditions of the Plan and the Trust Agreement. A person shall continue as an Eligible Employee eligible to have Tax-Deferred Contributions made to the Plan on his behalf only so long as he continues employment as an Employee.

ARTICLE IV  
TAX-DEFERRED CONTRIBUTIONS

4.1 Tax-Deferred Contributions

Effective as of the date he becomes an Eligible Employee, or any subsequent Enrollment Date, each Eligible Employee may elect in writing in accordance with rules prescribed by the Administrator to have Tax-Deferred Contributions made to the Plan on his behalf by his Employer as hereinafter provided. An Eligible Employee's written election shall include his authorization for his Employer to reduce his Compensation and to make Tax-Deferred Contributions on his behalf and his election as to the investment of his contributions in accordance with Article X. Tax-Deferred Contributions on behalf of an Eligible Employee shall commence with the first payment of Compensation made on or after the date on which his election is effective.

4.2 Amount of Tax-Deferred Contributions

The amount of Tax-Deferred Contributions to be made to the Plan on behalf of an Eligible Employee by his Employer shall be an integral percentage of his Compensation of not less than one percent nor more than 15 percent. In the event an Eligible Employee elects to have his Employer make Tax-Deferred Contributions on his behalf, his Compensation shall be reduced for each payroll period by the percentage he elects to have contributed on his behalf to the Plan in accordance with the terms of his currently effective reduction authorization.

Subject to the overall percentage limitations specified above, an Employer may allow an Eligible Employee to authorize a special reduction in that portion of his Compensation that is attributable to any Employer paid cash bonuses made for such Eligible Employee for the Plan Year in an amount up to 100 percent of such bonuses. The Employer may designate the bonuses for which the special reduction authorization is available; provided, however, that such designation shall be made on a uniform and non-discriminatory basis.

4.3 Changes in Reduction Authorization

An Eligible Employee may change the percentage of his future Compensation that his Employer contributes on his behalf as Tax-Deferred Contributions at such time or times during the Plan Year as the Administrator may prescribe by filing an amended reduction authorization with his Employer such number of days prior to the date such change is to become effective as the Administrator shall prescribe. An Eligible Employee who changes his reduction authorization shall be limited to selecting a percentage of his Compensation that is otherwise permitted hereunder. Tax-Deferred Contributions shall be made on behalf of such Eligible Employee by his Employer pursuant to his amended reduction authorization filed in accordance with this Section commencing with Compensation paid to the Eligible Employee on or after the date such filing is effective, until otherwise altered or terminated in accordance with the Plan.

#### 4.4 Suspension of Tax-Deferred Contributions

An Eligible Employee on whose behalf Tax-Deferred Contributions are being made may have such contributions suspended at any time by giving such number of days advance written notice to his Employer as the Administrator shall prescribe. Any such voluntary suspension shall take effect commencing with Compensation paid to such Eligible Employee on or after the expiration of the required notice period and shall remain in effect until Tax-Deferred Contributions are resumed as hereinafter set forth.

#### 4.5 Resumption of Tax-Deferred Contributions

An Eligible Employee who has voluntarily suspended his Tax-Deferred Contributions may have such contributions resumed at such time or times during the Plan Year as the Administrator may prescribe, by filing a new reduction authorization with his Employer such number of days prior to the date as of which such contributions are to be resumed as the Administrator shall prescribe.

#### 4.6 Delivery of Tax-Deferred Contributions

As soon after the date an amount would otherwise be paid to an Employee as it can reasonably be separated from Employer assets, each Employer shall cause to be delivered to the Trustee in cash all Tax-Deferred Contributions attributable to such amounts.

#### 4.7 Vesting of Tax-Deferred Contributions

A Participant's vested interest in his Tax-Deferred Contributions Sub-Account shall be at all times 100 percent.

ARTICLE V  
AFTER-TAX AND ROLLOVER CONTRIBUTIONS

5.1 No After-Tax Contributions

There shall be no After-Tax Contributions made to the Plan.

5.2 Rollover Contributions

An Employee who was a participant in a plan qualified under Section 401 or 403 of the Code and who receives a cash distribution from such plan that he elects either (i) to roll over immediately to a qualified retirement plan or (ii) to roll over into a conduit IRA from which he receives a later cash distribution, may elect to make a Rollover Contribution to the Plan if he is entitled under Section 402 (c), Section 403(a) (4), or Section 408 (d) (3) (A) of the Code to roll over such distribution to another qualified retirement plan. The Administrator may require an Employee to provide it with such information as it deems necessary or desirable to show that he is entitled to roll over such distribution to another qualified retirement plan. An Employee shall make a Rollover Contribution to the Plan by delivering, or causing to be delivered, to the Trustee the cash that constitutes the Rollover Contribution amount within 60 days of receipt of the distribution from the plan or from the conduit IRA in the manner prescribed by the Administrator. If the Employee does not already have an investment election on file with the Administrator, the Employee shall also deliver to the Administrator his election as to the investment of his contributions in accordance with Article X.

5.3 Vesting of Rollover Contributions

A Participant's vested interest in his Rollover Contributions Sub-Account shall be at all times 100 percent.

ARTICLE VI  
EMPLOYER CONTRIBUTIONS

6.1 Contribution Period

The Contribution Period for Employer Contributions under the Plan shall be each Plan Year.

6.2 Profit-Sharing Contributions

Each Employer may, in its discretion, make a Profit-Sharing Contribution to the Plan for the Contribution Period in an amount determined by the Sponsor.

6.3 Allocation of Profit-Sharing Contributions

Any Profit-Sharing Contribution made for a Contribution Period shall be allocated among the Employees who are eligible to participate in the allocation of Profit-Sharing Contributions for the Contribution Period, as determined under this Article. The allocable share of each such Employee shall be in the ratio which his Compensation from the Employers for the Contribution Period bears to the aggregate of such Compensation for all such Employees.

6.4 Matching Contributions

Each Employer may, in its discretion, make a Matching Contribution to the Plan for each Contribution Period in an amount up to the following percentage of the "eligible Tax-Deferred Contributions" for the Contribution Period made on behalf of its Employees during the Contribution Period who are eligible to participate in the allocation of Matching Contributions for the Contribution Period as determined under this Article, based on the number of years of Vesting Service as of January 4 of the Contribution Period.

Years of Vesting Service - - - - -	Contribution Percentage - - - - -
less than 3	50%
3 or more	100%

In addition, each Employer may increase proportionately the Matching Contribution percentages described above for the Contribution Period by an amount, determined by the Sponsor, in its discretion. For purposes of this Article, "eligible Tax-Deferred Contributions" with respect to an Employee mean the Tax-Deferred Contributions made on his behalf for the Contribution Period in an amount up to, but not exceeding, the "match level." For purposes of this Article, the "match level" means 6 percent of an Employee's Compensation for the Contribution Period.

6.5 Allocation of Matching Contributions

Any Matching Contribution made by an Employer for the Contribution Period shall be allocated among its Employees during the Contribution Period who are eligible to participate in the allocation of Matching Contributions for the Contribution Period, as determined under this Article. The allocable share of each such Employee shall be an amount up to the percentage of the "eligible Tax-Deferred Contributions" made on his behalf for the Contribution Period determined as provided in the preceding Section. Notwithstanding the foregoing, if any Matching Contribution made by an Employer for the Contribution Period is less than the maximum contribution amount provided, the contribution shall be allocated among all Employees who are

eligible to participate in the allocation in the same ratio that the Matching Contribution would have been allocated among the Employees if the Matching Contribution were the maximum contribution, provided hereunder. If an Employer makes a greater Matching Contribution for the Contribution Period, the allocable share of each such Employee in such Matching Contribution shall be the amount determined by the Sponsor.

#### 6.6 Verification of Amount of Employer Contributions by the Sponsor

The Sponsor shall verify the amount of Employer Contributions to be made by each Employer in accordance with the provisions of the Plan. Notwithstanding any other provision of the Plan to the contrary, the Sponsor shall determine the portion of the Employer Contribution to be made by each Employer with respect to an Employee who transfers from employment with one Employer as an Employee to employment with another Employer as an Employee.

#### 6.7 Payment of Employer Contributions

Employer Contributions made for a Contribution Period shall be paid in cash to the Trustee within the period of time required under the Code in order for the contribution to be deductible by the Employer in determining its Federal income taxes for the Plan Year.

#### 6.8 Eligibility to Participate in Allocation

Each Employee shall be eligible to participate in the allocation of Employer Contributions beginning on the date he becomes, or again becomes, an Eligible Employee in accordance with the provisions of Article III. Notwithstanding the foregoing, (a) no person shall be eligible to participate in the allocation of Profit Sharing Contributions for a Contribution Period unless (i) he is employed by an Employer or a Related Company on the last day of the Contribution Period and (ii) he has completed at least 500 Hours of Service during the Contribution Period and (b) no person shall be eligible to participate in the allocation of Matching Contributions for a Contribution Period unless he is employed by an Employer or a Related Company on the last day of the Contribution Period; provided, however, that if the Plan would not otherwise meet the minimum coverage requirements of Section 410(b) of the Code in any Plan Year, the group of Employees eligible to participate in the allocation of Profit Sharing Contributions shall be expanded to include the minimum number of Employees who would be eligible to participate except for their failure to complete the required number of Hours of Service during the Plan Year that is necessary to meet the minimum coverage requirements. The Employees who become eligible to participate under the provisions of the immediately preceding clause shall be those employees who have completed the greatest number of Hours of Service during the Plan Year. If the Plan still would not meet the minimum coverage requirements of Section 410(b) of the Code, the group of Employees eligible to participate in the allocation of Employer Contributions shall be expanded to include the minimum number of Employees who are not employed by an Employer or a Related Company on the last day of the Contribution Period that is necessary to meet the minimum coverage requirements. The Employees who become eligible to participate under the provisions of the immediately preceding clause shall be those Employees who have completed the greatest number of Hours of Service during the Contribution Period.

#### 6.9 Vesting of Employer Contributions

A Participant's vested interest in his Profit Sharing Contributions Sub-Account shall be at all times 100 percent. A Participant's vested interest in that portion of his Matching Contributions Sub-Account attributable to Matching Contributions allocated to such account prior to January 1,

1996 shall be 100 percent. A Participant's vested interest in that portion of his Matching Contributions Sub-Account attributable to Matching Contributions allocated to such account on or after January 1, 1996 shall be determined in accordance with the following schedule:

Years of Vesting Service -----	Vested Interest -----
Less than 1	0%
1 but less than 2	20%
2 but less than 3	50%
3 or more	100%

Notwithstanding the foregoing, if a Participant is employed by an Employer or a Related Company on his Normal Retirement Date, the date he attains age 55, the date he becomes physically or mentally disabled such that he can no longer continue in the service of his Employer and is eligible to receive a benefit under his Employer's long term disability plan, or the date he dies, his vested interest in his Matching Contributions Sub-Account shall be 100 percent.

6.10 Election of Former Vesting Schedule

If the Sponsor adopts an amendment to the Plan that directly or indirectly affects the computation of a Participant's vested interest in his Employer Contributions Sub-Account, any Participant with three or more years of Vesting Service shall have a right to have his vested interest in his Employer Contributions Sub-Account continue to be determined under the vesting provisions in effect prior to the amendment rather than under the new vesting provisions, unless the vested interest of the Participant in his Employer Contributions Sub-Account under the Plan as amended is not at any time less than such vested interest determined without regard to the amendment. A Participant shall exercise his right under this Section by giving written notice of his exercise thereof to the Administrator within 60 days after the latest of (i) the date he receives notice of the amendment from the Administrator, (ii) the effective date of the amendment, or (iii) the date the amendment is adopted. Notwithstanding the foregoing, a Participant's vested interest in his Employer Contributions Sub-Account on the effective date of such an amendment shall not be less than his vested interest in his Employer Contributions Sub-Account immediately prior to the effective date of the amendment.

6.11 Forfeitures to Reduce Employer Contributions

Notwithstanding any other provision of the Plan to the contrary, the amount of the Employer Contribution required under this Article for a Plan Year shall be reduced by the amount of any forfeitures occurring during the Plan Year that are not used to pay Plan expenses.



ARTICLE VII  
LIMITATIONS ON CONTRIBUTIONS

7.1 Definitions

For purposes of this Article, the following terms have the following meanings :

- (a) The "actual deferral percentage" with respect to an Eligible Employee for a particular Plan Year means the ratio of the Tax-Deferred Contributions made on his behalf for the Plan Year to his test compensation for the Plan Year; provided, however, that contributions made on a Participant's behalf for a Plan Year shall be included in determining his actual deferral percentage for such Plan Year only if the contributions are made to the Plan prior to the end of the 12-month period immediately following the Plan Year to which the contributions relate. The determination and treatment of the actual deferral percentage amounts for any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.
- (b) The "aggregate limit" means the sum of (i) 125 percent of the greater of the average contribution percentage for eligible participants other than Highly Compensated Employees or the average actual deferral percentage for Eligible Employees other than highly Compensated Employees and (ii) the lesser of 200 percent or two plus the lesser of such average contribution percentage or average actual deferral percentage, or, if it would result in a larger aggregate limit, the sum of (iii) 125 percent of the lesser of the average contribution percentage for eligible participants other than Highly Compensated Employees or the average actual deferral percentage for Eligible Employees other than Highly Compensated Employees and (iv) the lesser of 200 percent or two plus the greater of such average contribution percentage or average actual deferral percentage.
- (c) The "annual addition" with respect to a Participant for a limitation year means the sum of the Tax-Deferred Contributions and Employer Contributions allocated to his Separate Account for the limitation year (including any excess contributions that are distributed pursuant to this Article), the employer contributions, employee contributions, and forfeitures allocated to his accounts for the limitation year under any other qualified defined contribution plan (whether or not terminated) maintained by an Employer or a Related Company concurrently with the Plan, and amounts described in Sections 415 (1) (2) and 419A (d) (2) of the Code allocated to his account for the limitation year.
- (d) The "Code Section 402 (g) limit" means the dollar limit imposed by Section 402 (g) (1) of the Code or established by the Secretary of the Treasury pursuant to Section 402 (g) (5) of the Code in effect on January 1 of the calendar year in which an Eligible Employee's taxable year begins.
- (e) The "contribution percentage" with respect to an eligible participant for a particular Plan Year means the ratio of the matching contributions made to the Plan on his behalf for the Plan Year to his test compensation for such Plan Year, except that, to the extent permitted by regulations issued under Section 401 (m) of the Code, the Sponsor may elect to take into account in computing the numerator of each eligible participant's contribution percentage the Tax-Deferred Contributions made to the Plan on his behalf for the Plan Year; provided, however, that any Tax-Deferred Contributions that were taken into account in computing the numerator of an eligible participant's actual deferral percentage may not be taken into account in computing the numerator of his contribution percentage;

and provided, further, that contributions made by or on a Participant's behalf for a Plan Year shall be included in determining his contribution percentage for such Plan Year only if the contributions are made to the Plan prior to the end of the 12-month period immediately following the Plan Year to which the contributions relate. The determination and treatment of the contribution percentage amounts for any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

- (f) An "elective contribution" means any employer contribution made to a plan maintained by an Employer or any Related Company on behalf of a Participant in lieu of cash compensation pursuant to his written election to defer under any qualified CODA as described in Section 401(k) of the Code, any simplified employee pension cash or deferred arrangement as described in Section 402(h) (1) (B) of the Code, any eligible deferred compensation plan under Section 457 of the Code, or any plan as described in Section 501(c) (18) of the Code, and any contribution made on behalf of the Participant by an Employer or a Related Company for the purchase of an annuity contract under Section 403(b) of the Code pursuant to a salary reduction agreement.
- (g) An "eligible participant" means any Employee who is eligible to have Tax-Deferred Contributions made on his behalf (if Tax-Deferred Contributions are taken into account in computing contribution percentages) or to participate in the allocation of matching contributions.
- (h) An "excess deferral" with respect to a Participant means that portion of a Participant's Tax-Deferred Contributions that when added to amounts deferred under other plans or arrangements described in Sections 401(k), 408(k), or 403(b) of the Code, would exceed the Code Section 402(g) limit and is includable in the Participant's gross income under Section 402(g) of the Code.
- (i) A "family member" of an Employee means the Employee's spouse, his lineal ascendants, his lineal descendants, and the spouses of such lineal ascendants and descendants.
- (j) A "limitation year" means the calendar year.
- (k) A "matching contribution" means any employer contribution allocated to an Eligible Employee's account under the Plan or any other plan of an Employer or a Related Company solely on account of elective contributions made on his behalf or employee contributions made by him.
- (l) The "test compensation" of an Eligible Employee for a Plan Year means compensation as defined in Section 414(s) of the Code and regulations issued thereunder, limited, however, to (1) \$200,000 for Plan Years beginning prior to January 1, 1994, or (2) \$150,000 for Plan Years beginning on or after January 1, 1994 (subject to adjustment annually as provided in Section 401(a) (17) (B) and Section 415(d) of the Code; provided, however, that the dollar increase in effect on January 1 of any calendar year, if any, is effective for Plan Years beginning in such calendar year). If the test compensation of a Participant is determined over a period of time that contains fewer than 12 calendar months, then the annual compensation limitation described above shall be adjusted with respect to that Participant by multiplying the annual compensation limitation in effect for the Plan Year by a fraction the numerator of which is the number

of full months in the period and the denominator of which is 12; provided, however, that no proration is required for a Participant who is covered under the Plan for less than one full Plan Year if the formula for allocations is based on Compensation for a period of at least 12 months. In determining the test compensation, for purposes of applying the annual limitation described above, of a Participant who is a five-percent owner or among the ten Highly Compensated Employees receiving the greatest test compensation for the limitation year, the test compensation of the Participant's spouse and of his lineal descendants who have not attained age 19 as of the close of the limitation year shall be included as test compensation of the Participant for the limitation year. If as a result of applying the family aggregation rule described in the preceding sentence the annual compensation limitation would be exceeded, the limitation shall be prorated among the affected family members in proportion to each member's test compensation as determined prior to application of the family aggregation rules.

## 7.2 Code Section 402(g) Limit

In no event shall the amount of the Tax-Deferred Contributions made on behalf of an Eligible Employee for his taxable year, when aggregated with any elective contributions made on behalf of the Eligible Employee under any other plan of an Employer or a Related Company for his taxable year, exceed the Code Section 402(g) limit. In the event that the Administrator determines that the reduction percentage elected by an Eligible Employee will result in his exceeding the Code Section 402(g) limit, the Administrator may adjust the reduction authorization of such Eligible Employee by reducing the percentage of his Tax-Deferred Contributions to such smaller percentage that will result in the Code Section 402(g) limit not being exceeded. If the Administrator determines that the Tax-Deferred Contributions made on behalf of an Eligible Employee would exceed the Code Section 402(g) limit for his taxable year, the Tax-Deferred Contributions for such Participant shall be automatically suspended for the remainder, if any, of such taxable year.

If an Employer notifies the Administrator that the Code Section 402(g) limit has nevertheless been exceeded by an Eligible Employee for his taxable year, the Tax-Deferred Contributions that, when aggregated with elective contributions made on behalf of the Eligible Employee under any other plan of an Employer or a Related Company, would exceed the Code Section 402(g) limit, plus any income and minus any losses attributable thereto, shall be distributed to the Eligible Employee no later than the April 15 immediately following such taxable year. Any Tax-Deferred Contributions that are distributed to an Eligible Employee in accordance with this Section shall NOT be taken into account in computing the Eligible Employee's actual deferral percentage for the Plan Year in which the Tax-Deferred Contributions were made, unless the Eligible Employee is a Highly Compensated Employee. If an amount of Tax-Deferred Contributions is distributed to a Participant in accordance with this Section, matching contributions that are attributable solely to the distributed Tax-Deferred Contributions, plus any income and minus any losses attributable thereto, shall be forfeited by the Participant. Any such forfeited amounts shall be treated as a forfeiture under the Plan in accordance with the provisions of Article XIV as of the last day of the month in which the distribution of Tax-Deferred Contributions pursuant to this Section occurs.

## 7.3 Distribution of Excess Deferrals

Notwithstanding any other provision of the Plan to the contrary, if a Participant notifies the Administrator in writing no later than the March 1 following the close of the Participant's taxable year that excess deferrals have been made on his behalf under the Plan for such taxable year, the excess deferrals, plus any income and minus any losses attributable thereto, shall be distributed to

the Participant no later than the April 15 immediately following such taxable year. Any Tax-Deferred Contributions that are distributed to a Participant in accordance with this Section shall nevertheless be taken into account in computing the Participant's actual deferral percentage for the Plan Year in which the Tax-Deferred Contributions were made. If an amount of Tax-Deferred Contributions is distributed to a Participant in accordance with this Section, matching contributions that are attributable solely to the distributed Tax-Deferred Contributions, plus any income and minus any losses attributable thereto, shall be forfeited by the Participant. Any such forfeited amounts shall be treated as a forfeiture under the Plan in accordance with the provisions of Article XIV as of the last day of the month in which the distribution of Tax-Deferred Contributions pursuant to this Section occurs.

#### 7.4 Limitation on Tax-Deferred Contributions of Highly Compensated Employees

Notwithstanding any other provision of the Plan to the contrary, the Tax-Deferred Contributions made with respect to a Plan Year on behalf of Eligible Employees who are Highly Compensated Employees may not result in an average actual deferral percentage for such Eligible Employees that exceeds the greater of:

- (a) a percentage that is equal to 125 percent of the average actual deferral percentage for all other Eligible Employees; or
- (b) a percentage that is not more than 200 percent of the average actual deferral percentage for all other Eligible Employees and that is not more than two percentage points higher than the average actual deferral percentage for all other Eligible Employees.

In order to assure that the limitation contained herein is not exceeded with respect to a Plan Year, the Administrator is authorized to suspend completely further Tax-Deferred Contributions on behalf of Highly Compensated Employees for any remaining portion of a Plan Year or to adjust the projected actual deferral percentages of Highly Compensated Employees by reducing their percentage elections with respect to Tax-Deferred Contributions for any remaining portion of a Plan Year to such smaller percentages that will result in the limitation set forth above not being exceeded. In the event of any such suspension or reduction, Highly Compensated Employees affected thereby shall be notified of the reduction or suspension as soon as possible and shall be given an opportunity to make a new Tax-Deferred Contribution election to be effective the first day of the next following Plan Year. In the absence of such an election, the election in effect immediately prior to the suspension or adjustment described above shall be reinstated as of the first day of the next following Plan Year.

For purposes of applying the limitation contained in this Section, the Tax-Deferred Contributions and test compensation of any Eligible Employee who is a family member of another Eligible Employee who is a five percent owner or among the ten Highly Compensated Employees receiving the greatest test compensation for the Plan Year shall be aggregated with the Tax-Deferred Contributions and test compensation of such other Eligible Employee, and such family member shall not be considered an Eligible Employee for purposes of determining the average actual deferral percentage for all other Eligible Employees.

In determining the actual deferral percentage for any Eligible Employee who is a Highly Compensated Employee for the Plan Year, elective contributions made to his accounts under any other plan of an Employer or a Related Company shall be treated as if all such contributions were made to the Plan; provided, however, that if such a plan has a plan year different from the Plan Year, any such contributions made to the Highly Compensated Employee's accounts under the

plan for the plan year ending with or within the same calendar year as the Plan Year shall be treated as if such contributions were made to the Plan. Notwithstanding the foregoing, such contributions shall not be treated as if they were made to the Plan if regulations issued under Section 401(k) of the Code do not permit such plan to be aggregated with the Plan.

If one or more plans of an Employer or Related Company are aggregated with the Plan for purposes of satisfying the requirements of Section 401(a) (4) or 410(b) of the Code, then actual deferral percentages under the Plan shall be calculated as if the Plan and such one or more other plans were a single plan. For Plan Years beginning after December 31, 1991, plans may be aggregated to satisfy Section 401(k) of the Code only if they have the same plan year.

The Administrator shall maintain records sufficient to show that the limitation contained in this Section was not exceeded with respect to any Plan Year.

#### 7.5 Distribution of Excess Tax-Deferred Contributions

Notwithstanding any other provision of the Plan to the contrary, in the event that the limitation contained in Section 7.4 is exceeded in any Plan Year, the Tax-Deferred Contributions made with respect to a Highly Compensated Employee that exceed the maximum amount permitted to be contributed to the Plan on his behalf under Section 7.4, plus any income and minus any losses attributable thereto, shall be distributed to the Highly Compensated Employee prior to the end of the next succeeding Plan Year. If excess amounts are attributable to Participants aggregated under the family aggregation rules described in Section 7.4, the excess shall be allocated among family members in proportion to the Tax-Deferred Contributions made with respect to each family member. If such excess amounts are distributed more than 2 1/2 months after the last day of the Plan Year for which the excess occurred, an excise tax may be imposed under Section 4979 of the Code on the Employer maintaining the Plan with respect to such amounts.

The maximum amount permitted to be contributed to the Plan on a Highly Compensated Employee's behalf under Section 7.4 shall be determined by reducing Tax-Deferred Contributions made on behalf of Highly Compensated Employees in order of their actual deferral percentages beginning with the highest of such percentages. The determination of the amount of excess Tax-Deferred Contributions shall be made after application of Section 7.3, if applicable.

If an amount of Tax-Deferred Contributions is distributed to a Participant in accordance with this Section, matching contributions that are attributable solely to the distributed Tax-Deferred Contributions, plus any income and minus any losses attributable thereto, shall be forfeited by the Participant. Any such forfeited amounts shall be treated as a forfeiture under the Plan in accordance with the provisions of Article XIV as of the last day of the month in which the distribution of Tax-Deferred Contributions pursuant to this Section occurs.

#### 7.6 Limitation on Matching Contributions of Highly Compensated Employees

Notwithstanding any other provision of the Plan to the contrary, the matching contributions made with respect to a Plan Year on behalf of eligible participants who are Highly Compensated Employees may not result in an average contribution percentage for such eligible participants that exceeds the greater of:

- (a) a percentage that is equal to 125 percent of the average contribution percentage for all other eligible participants; or

- (b) a percentage that is not more than 200 percent of the average contribution percentage for all other eligible participants and that is not more than two percentage points higher than the average contribution percentage for all other eligible participants.

For purposes of applying the limitation contained in this Section, the matching contributions, Tax-Deferred Contributions (to the extent that such Tax-Deferred Contributions are taken into account in computing contribution percentages), and test compensation of any eligible participant who is a family member of another eligible participant who is a five percent owner or among the ten Highly Compensated Employees receiving the greatest test compensation for the Plan Year shall be aggregated with the matching contributions, Tax-Deferred Contributions, and test compensation of such other eligible participant, and such family member shall not be considered an eligible participant for purposes of determining the average contribution percentage for all other eligible participants.

In determining the contribution percentage for any eligible participant who is a Highly Compensated Employee for the Plan Year, matching contributions, employee contributions, and elective contributions (to the extent that elective contributions are taken into account in computing contribution percentages) made to his accounts under any other plan of an Employer or a Related Company shall be treated as if all such contributions were made to the Plan; provided, however, that if such a plan has a plan year different from the Plan Year, any such contributions made to the Highly Compensated Employee's accounts under the plan for the plan year ending with or within the same calendar year as the Plan Year shall be treated as if such contributions were made to the Plan. Notwithstanding the foregoing, such contributions shall not be treated as if they were made to the Plan if regulations issued under Section 401(m) of the Code do not permit such plan to be aggregated with the Plan.

If one or more plans of an Employer or a Related Company are aggregated with the Plan for purposes of satisfying the requirements of Section 401(a) (4) or 410 (b) of the Code, the contribution percentages under the Plan shall be calculated as if the Plan and such one or more other plans were a single plan. Plans may be aggregated to satisfy Section 401(m) of the Code only if they have the same plan year.

The Administrator shall maintain records sufficient to show that the limitation contained in this Section was not exceeded with respect to any Plan Year and the amount of the elective contributions taken into account in computing contribution percentage for any Plan Year.

#### 7.7 Forfeiture or Distribution of Excess Contributions

Notwithstanding any other provision of the Plan to the contrary, in the event that the limitation contained in Section 7.6 is exceeded in any Plan Year, the matching contributions made on behalf of a Highly Compensated Employee that exceed the maximum amount permitted to be contributed to the Plan on behalf of such Highly Compensated Employee under Section 7.6, plus any income and minus any losses attributable thereto, shall be forfeited, to the extent forfeitable, or distributed to the Participant prior to the end of the next succeeding Plan Year as hereinafter provided. If excess amounts are attributable to Participants aggregated under the family aggregation rules described in Section 7.5, the excess shall be allocated among family members in proportion to the matching contributions made with respect to each family member. If such excess amounts are distributed more than 2 1/2 months after the last day of the Plan Year for which the excess occurred, an excise tax may be imposed under Section 4979 of the Code on the Employer maintaining the Plan with respect to such amounts.

The maximum amount permitted to be contributed to the Plan on behalf of a Highly Compensated Employee under Section 7.6 shall be determined by reducing matching contributions made on behalf of Highly Compensated Employees in order of their contribution percentages beginning with the highest of such percentages.

Any amounts forfeited with respect to a Participant pursuant to this Section shall be treated as a forfeiture under the Plan in accordance with the provisions of Article XIV as of the last day of the month in which the distribution of contributions pursuant to this Section occurs. Excess matching contributions shall be distributable to the extent the Participant has a vested interest in his Employer Contributions Sub-Account that is attributable to matching contributions and shall otherwise be forfeitable. The determination of the amount of excess matching contributions shall be made after application of Section 7.3, if applicable, and after application of Section 7.5, if applicable.

#### 7.8 Multiple Use Limitation

Notwithstanding any other provision of the Plan to the contrary, the following multiple use limitation as required under Section 401(m) of the Code shall apply: the sum of the average actual deferral percentage for Eligible Employees who are Highly Compensated Employees and the average contribution percentage for eligible participants who are Highly Compensated Employees may not exceed the aggregate limit. In the event that, after satisfaction of Section 7.5 and Section 7.7, it is determined that contributions under the Plan fail to satisfy the multiple use limitation contained herein, the multiple use limitation shall be satisfied by further reducing the actual deferral percentages of Eligible Employees who are Highly Compensated Employees (beginning with the highest such percentage) to the extent necessary to eliminate the excess, with such further reductions to be treated as excess Tax-Deferred Contributions and disposed of as provided in Section 7.5, or in an alternative manner, consistently applied, that may be permitted by regulations issued under Section 401(m) of the Code.

#### 7.9 Determination of Income or Loss

The income or loss attributable to excess contributions that are distributed pursuant to this Article shall be determined for the preceding Plan Year under the method otherwise used for allocating income or loss to Participant's Separate Accounts.

#### 7.10 Code Section 415 Limitations on Crediting of Contributions and Forfeitures

Notwithstanding any other provision of the Plan to the contrary, the annual addition with respect to a Participant for a limitation year shall in no event exceed the lesser of (i) \$30,000 (adjusted as provided in Section 415(d) of the Code, with the first adjustment being made for limitation years beginning on or after January 1, 1996) or (ii) 25 percent of the Participant's compensation, as defined in Section 415 (c) (3) of the Code and regulations issued thereunder, for the limitation year. If the annual addition to the Separate Account of a Participant in any limitation year would otherwise exceed the amount that may be applied for his benefit under the limitation contained in this Section, the limitation shall be satisfied by reducing contributions made on behalf of the Participant to the extent necessary in the following order:

Tax-Deferred Contributions made on the Participant's behalf for the limitation year and the matching contributions attributable thereto, if any, shall be reduced pro rata.

The amount of any reduction of Tax-Deferred Contributions (plus any income attributable thereto) shall be returned to the Participant. The amount of any reduction of Employer Contributions shall be deemed a forfeiture for the limitation year. Amounts deemed to be forfeitures under this Section shall be held unallocated in a suspense account established for the limitation year and shall be applied against the Employer's contribution obligation for the next following limitation year (and succeeding limitation years, as necessary). If a suspense account is in existence at any time during a limitation year, all amounts in the suspense account must be allocated to Participants' Separate Accounts (subject to the limitations contained herein) before any further Tax-Deferred Contributions or Employer Contributions may be made to the Plan on behalf of Participants. No suspense account established hereunder shall share in any increase or decrease in the net worth of the Trust. For purposes of this Article, excesses shall result only from the allocation of forfeitures, a reasonable error in estimating a Participant's annual compensation (as defined in Section 415 (c) (3) of the Code and regulations issued thereunder), a reasonable error in determining the amount of Tax-Deferred Contributions that may be made with respect to any Participant under the limits of Section 415 of the Code, or other limited facts and circumstances that justify the availability of the provisions set forth above.

#### 7.11 Coverage Under Other Qualified Defined Contribution Plan

If a Participant is covered by any other qualified defined contribution plan (whether or not terminated) maintained by an Employer or a Related Company concurrently with the Plan, and if the annual addition for the limitation year would otherwise exceed the amount that may be applied for the Participant's benefit under the limitation contained in Section 7.10, such excess shall be reduced first by returning the employee contributions made by the Participant for the limitation year under all of the defined contribution plans other than the Plan and the income attributable thereto to the extent necessary. If the limitation contained in Section 7.10 is still not satisfied after returning all of the employee contributions made by the Participant under all such other plans, the excess shall be reduced by returning the elective contributions made on the Participant's behalf for the limitation year under all such other plans and the income attributable thereto to the extent necessary on a pro rata basis among all of such plans. If the limitation contained in Section 7.10 is still not satisfied after returning all of the elective contributions made on the Participant's behalf under all such other plans, the procedure set forth in Section 7.10 shall be invoked to eliminate any such excess. If the limitation contained in Section 7.10 is still not satisfied after invocation of the procedure set forth in Section 7.10, the portion of the employer contributions and of forfeitures for the limitation year under all such other plans that has been allocated to the Participant thereunder, but which exceeds the limitation set forth in Section 7.10, shall be deemed a forfeiture for the limitation year and shall be disposed of as provided in such other plans; provided, however, that if the Participant is covered by a money purchase pension plan, the forfeiture shall be effected first under any other defined contribution plan that is not a money purchase pension plan and, if the limitation is still not satisfied, then under such money purchase pension plan.



#### 7.12 Coverage Under Qualified Defined Benefit Plan

If a Participant in the Plan is also covered by a qualified defined benefit plan (whether or not terminated) maintained by an Employer or a Related Company, in no event shall the sum of the defined benefit plan fraction (as defined in Section 415(e) (2) of the Code) and the defined contribution plan fraction (as defined in Section 415(e) (3) of the Code) exceed 1.0 in any limitation year. If, before October 3, 1973, the Participant was an active participant in a qualified defined benefit plan maintained by an Employer or a Related Company and otherwise satisfies the requirements of Section 2004(d) (2) of ERISA, then for purposes of applying this Section, the defined benefit plan fraction shall not exceed 1.0. In the event the special limitation contained in this Section is exceeded, the benefits otherwise payable to the Participant under any such qualified defined benefit plan shall be reduced to the extent necessary to meet such limitation.

#### 7.13 Scope of Limitations

The limitations contained in Section 7.10, 7.11, and 7.12 shall be applicable only with respect to benefits provided pursuant to defined contribution plans and defined benefit plans described in Section 415(k) of the Code.

ARTICLE VIII  
TRUST FUNDS AND SEPARATE ACCOUNTS

8.1 General Fund

The Trustee shall maintain a General Fund as required to hold and administer any assets of the Trust that are not allocated among the Investment Funds as provided in the Plan or the Trust Agreement. The General Fund shall be held and administered as a separate common trust fund. The interest of each Participant or Beneficiary under the Plan in the General Fund shall be an undivided interest.

8.2 Investment Funds

The Sponsor shall determine the number and type of Investment Funds and select the investments for such Investment Funds. The Sponsor shall communicate the same and any changes therein in writing to the Administrator and the Trustee. Each Investment Fund shall be held and administered as a separate pool. The interest of each participant or Beneficiary under the Plan in any Investment Fund shall be an undivided interest.

8.3 Loan Investment Fund

If a loan from the Plan to a Participant is approved in accordance with the provisions of Article XII, the Sponsor shall direct the establishment and maintenance of a loan Investment Fund in the Participant's name. The assets of the loan Investment Fund shall be held as a separate trust fund. A Participant's loan Investment Fund shall be invested in the note reflecting the loan that is executed by the Participant in accordance with the provisions of Article XII. Notwithstanding any other provision of the Plan to the contrary, income received with respect to a Participant's loan Investment Fund shall be allocated and the loan Investment Fund shall be administered as provided in Article XII.

8.4 Income on Trust

Any dividends, interest, distributions, or other income received by the Trustee with respect to any Trust Fund maintained hereunder shall be allocated by the Trustee to the Trust Fund for which the income was received.

8.5 Separate Accounts

As of the first date a contribution is made by or on behalf of an Employee, there shall be established a Separate Account in his name reflecting his interest in the Trust. Each Separate Account shall be maintained and administered for each Participant and Beneficiary in accordance with the provisions of the Plan. The balance of each Separate Account shall be the balance of the account after all credits and charges thereto, for and as of such date, have been made as provided herein.

## 8.6 Sub-Accounts

A Participant's Separate Account shall be divided into individual Sub-Accounts reflecting the portion of the Participant's Separate Account that is derived from Tax-Deferred Contributions, Rollover Contributions, or Employer Contributions. Each Sub-Account shall reflect separately contributions allocated to each Trust Fund maintained hereunder and the earnings and losses attributable thereto. Such other Sub-Accounts may be established as are necessary or appropriate to reflect a Participant's interest in the Trust.

ARTICLE IX  
LIFE INSURANCE CONTRACTS

9.1 No Life Insurance Contracts

There shall be no life insurance contracts purchased under the Plan.

ARTICLE X  
DEPOSIT AND INVESTMENT OF CONTRIBUTIONS

10.1 Future Contribution Investment Elections

Each Eligible Employee shall make an investment election in the manner and form prescribed by the Administrator directing the manner in which his Tax-Deferred Contributions, Rollover Contributions, and Employer Contributions shall be invested. An Eligible Employee's investment election shall specify the percentage, in the percentage increments prescribed by the Administrator, of such contributions that shall be allocated to one or more of the Investment Funds with the sum of such percentages equaling 100 percent. The investment election by a Participant shall remain in effect until his entire interest under the Plan is distributed or forfeited in accordance with the provisions of the Plan or until he files a change of investment election with the Administrator, in such form as the Administrator shall prescribe. A Participant's change of investment election may be made effective as of the date or dates prescribed by the Administrator.

10.2 Deposit of Contributions

All Tax-Deferred Contributions, Rollover Contributions, and Employer Contributions shall be deposited in the trust and allocated among the Investment Funds in accordance with the Participant's currently effective investment election. If no investment election is on file with the Administrator at the time contributions are to be deposited to a Participant's Separate Account, the Participant shall be notified and an investment election form shall be provided to him. Until such Participant shall make an effective election under this Section, his contributions shall be allocated among the Investment Funds as directed by the Administrator.

10.3 Election to Transfer Between Funds

A participant may elect to transfer investments from any Investment Fund to any other Investment Fund. The Participant's transfer election shall specify either (i) a percentage, in the percentage increments prescribed by the Administrator, of the amount eligible for transfer, which percentage may not exceed 100 percent, or (ii) a dollar amount that is to be transferred. Subject to any restrictions pertaining to a particular Investment Fund, a Participant's transfer election may be made effective as of the date or dates prescribed by the Administrator.

ARTICLE XI  
CREDITING AND VALUING SEPARATE ACCOUNTS

11.1 Crediting Separate Accounts

All contributions made under the provisions of the Plan shall be credited to Separate Accounts in the Trust Funds by the Trustee, in accordance with procedures established in writing by the Administrator, either when received or on the succeeding Valuation Date after valuation of the Trust Fund has been completed for such Valuation Date as provided in Section 11.2, as shall be determined by the Administrator.

11.2 Valuing Separate Accounts

Separate Accounts in the Trust Funds shall be valued by the Trustee on the Valuation Date, in accordance with procedures established in writing by the Administrator, either in the manner adopted by the Trustee and approved by the Administrator or in the manner set forth in Section 11.3 as Plan valuation procedures, as determined by the Administrator.

11.3 Plan Valuation Procedures

With respect to the Trust Funds, the Administrator may determine that the following valuation procedures shall be applied. As of each Valuation Date hereunder, the portion of any Separate Accounts in a Trust Fund shall be adjusted to reflect any increase or decrease in the value of the Trust Fund for the period of time occurring since the immediately preceding Valuation Date for the Trust Fund (the "valuation period") in the following manner:

- (a) First, the value of the Trust Fund shall be determined by valuing all of the assets of the Trust Fund at fair market value.
- (b) Next, the net increase or decrease in the value of the Trust Fund attributable to net income and all profits and losses, realized and unrealized, during the valuation period shall be determined on the basis of the valuation under paragraph (a) taking into account appropriate adjustments for contributions, loan payments, and transfers to and distributions, withdrawals, loans, and transfers from such Trust Fund during the valuation period.
- (c) Finally, the net increase or decrease in the value of the Trust Fund shall be allocated among Separate Accounts in the Trust Fund in the ratio of the balance of the portion of such Separate Account in the Trust Fund as of the preceding Valuation Date less any distributions, withdrawals, loans, and transfers from such Separate Account balance in the Trust Fund since the Valuation Date to the aggregate balances of the portions of all Separate Accounts in the Trust Fund similarly adjusted, and each Separate Account in the Trust Fund shall be credited or charged with the amount of its allocated share. Notwithstanding the foregoing, the Administrator may adopt such accounting procedures as it considers appropriate and equitable to establish a proportionate crediting of net increase or decrease in the value of the Trust Fund for contributions, loan payments, and transfers to and distributions, withdrawals, loans, and transfer from such Trust Fund made by or on behalf of a Participant during the valuation period.

#### 11.4 Finality of Determinations

The Trustee shall have exclusive responsibility for determining the balance of each Separate Account maintained hereunder. The Trustee's determinations thereof shall be conclusive upon all interested parties.

#### 11.5 Notification

Within a reasonable period of time after the end of each Plan Year, the Administrator shall notify each Participant and Beneficiary of the balances of his Separate Account and Sub-Accounts as of a Valuation Date during the Plan Year.

ARTICLE XII  
LOANS

12.1 Application for Loan

A Participant who is a party in interest may make written application to the Administrator for a loan from his Separate Account.

As collateral for any loan granted hereunder, the Participant shall grant to the Plan a security interest in his vested interest under the Plan equal to the amount of the loan; provided, however, that in no event may the security interest exceed 50 percent of the Participant's vested interest under the Plan determined as of the date as of which the loan is originated in accordance with Plan provisions. In the case of a Participant who is an active employee, the Participant also shall enter into an agreement to repay the loan by payroll withholding. No loan in excess of 50 percent of the Participant's vested interest under the Plan shall be made from the Plan. Loans shall not be made available to Highly Compensated Employees in an amount greater than the amount made available to other employees.

A loan shall not be granted unless the Participant consents in writing to the charging of his Separate Account for unpaid principal and interest amounts in the event the loan is declared to be in default.

12.2 Reduction of Account Upon Distribution

Notwithstanding any other provision of the Plan, the amount of a Participant's Separate Account that is distributable to the Participant or his Beneficiary under Article XIII or XV shall be reduced by the portion of his vested interest that is held by the Plan as security for any loan outstanding to the Participant, provided that the reduction is used to repay the loan. If distribution is made because of the Participant's death prior to the commencement of distribution of his Separate Account and less than 100 percent of the Participant's vested interest in his Separate Account (determined without regard to the preceding sentence) is payable to his surviving spouse, then the balance of the Participant's vested interest in his Separate Account shall be adjusted by reducing the vested account balance by the amount of the security used to repay the loan, as provided in the preceding sentence, prior to determining the amount of the benefit payable to the surviving spouse.

12.3 Requirements to Prevent a Taxable Distribution

Notwithstanding any other provision of the Plan to the contrary, the following terms and conditions shall apply to any loan made to a Participant under this Article:

- (a) The interest rate on any loan to a Participant shall be a reasonable interest rate commensurate with current interest rates charged for loans made under similar circumstances by persons in the business of lending money.
- (b) The amount of any loan to a Participant (when added to the outstanding balance of all other loans to the Participant from the Plan or any other plan maintained by an Employer or a Related Company) shall not exceed the lesser of:



- (i) \$50,000, reduced by the excess, if any, of the highest outstanding balance of any other loan to the Participant from the Plan or any other plan maintained by an Employer or a Related Company during the preceding 12-month period over the outstanding balance of such loans on the date a loan is made hereunder; or
  - (ii) 50 percent of the vested portions of the Participant's Separate Account and his vested interest under all other plans maintained by an Employer of a Related Company.
- (c) The term of any loan to a Participant shall be no greater than five years, except in the case of a loan used to acquire any dwelling unit which within a reasonable period of time is to be used (determined at the time the loan is made) as a principal residence of the Participant.
- (d) Except as otherwise permitted under Treasury regulations, substantially level amortization shall be required over the term of the loan with payments made not less frequently than quarterly.

#### 12.4 Administration of Loan Investment Fund

Upon approval of a loan to a Participant, the Administrator shall direct the Trustee to transfer an amount equal to the loan amount from the Investment Funds in which it is invested, as directed by the Administrator, to the loan Investment Fund established in the Participant's name. Any loan approved by the Administrator shall be made to the Participant out of the Participant's loan Investment Fund. All principal and interest paid by the Participant on a loan made under this Article shall be deposited to his Separate Account and shall be allocated upon receipt among the Investment Funds in accordance with the Participant's currently effective investment election. The balance of the Participant's loan Investment Fund shall be decreased by the amount of principal payments and the loan Investment Fund shall be terminated when the loan has been repaid in full.

#### 12.5 Default

If a Participant fails to make or cause to be made, any payment required under the terms of the loan within 90 days following the date on which such payment shall become due or there is an outstanding principal balance existing on a loan after the last scheduled repayment date, the Administrator may direct the Trustee to declare the loan to be in default, and the entire unpaid balance of such loan, together with accrued interest, shall be immediately due and payable. In any such event, if such balance and interest thereon is not then paid, the Trustee shall charge the Separate Account of the borrower with the amount of such balance and interest as of the earliest date a distribution may be made from the Plan to the borrower without adversely affecting the tax qualification of the Plan or of the cash or deferred arrangement.

#### 12.6 Special Rules Applicable to Loans

Any loan made hereunder shall be subject to the following rules:

- (a) Loans limited to Eligible Employees: No loans shall be made to an Employee who makes a Rollover Contribution in accordance with Article IV, but who is not an Eligible Employee as provided in Article III.

- (b) Minimum Loan Amount: A Participant may not request a loan for less than \$1,000.
- (c) Maximum Number of Outstanding Loans: A Participant with an outstanding loan may not apply for another loan until the existing loan is paid in full and may not refinance an existing loan or attain a second loan for the purpose of paying off the existing loan. A Participant may not apply for more than one loan during the Plan Year. The provisions of this paragraph shall not apply to any loans made prior to the effective date of this amendment and restatement; provided, however, that a Participant may not apply for a new loan hereunder until all outstanding loans made to the Participant prior to the effective date of this amendment and restatement have been paid in full.
- (d) Maximum Period for Real Estate Loans: The term of any loan to a Participant that is used to acquire any dwelling unit which within a reasonable period of time is to be used (determined at the time the loan is made) as a principal residence of the Participant shall be no greater than ten years.
- (e) Pre-Payment Without Penalty: A Participant may pre-pay the balance of any loan hereunder prior to the date it is due without penalty.
- (f) Effect of Termination of Employment: Upon a Participant's termination of employment, the balance of any outstanding loan hereunder shall immediately become due and owing.

#### 12.7 Loans Granted Prior to Amendment

Notwithstanding any other provision of this Article to the contrary, any loan made under the provisions of the Plan as in effect prior to this amendment and restatement shall remain outstanding until repaid in accordance with its terms or the otherwise applicable Plan provisions.

ARTICLE XIII  
WITHDRAWALS WHILE EMPLOYED

13.1 Withdrawals of Rollover Contributions

A Participant who is employed by an Employer or a Related Company and is determined by the Administrator to have incurred a hardship as defined in this Article may elect in writing, subject to the limitations and conditions prescribed in this Article, to make a cash withdrawal or a withdrawal in the form of a qualified joint and survivor annuity as provided in Article XVI from his Rollover Contributions Sub-Account.

13.2 Withdrawals of Tax-Deferred Contributions

A Participant who is employed by an Employer or a Related Company and who is determined by the Administrator to have incurred a hardship as defined in this Article may elect in writing, subject to the limitations and conditions prescribed in this Article, to make a cash withdrawal or a withdrawal in the form of a qualified joint and survivor annuity as provided in Article XVI from his Tax-Deferred Contributions Sub-Account. The maximum amount that a Participant may withdraw pursuant to this Section because of a hardship is the balance of his Tax-Deferred Contributions Sub-Account, exclusive of any earnings credited to such Sub-Account.

13.3 Conditions and Limitations on Hardship Withdrawals

A Participant must file a written application for a hardship withdrawal with the Administrator such number of days prior to the date as of which it is to be effective as the Administrator may prescribe. Hardship withdrawals may be made effective as soon as reasonably practicable following the Administrator's receipt of the Participant's directions. The Administrator shall grant a hardship withdrawal only if it determines that the withdrawal is necessary to meet an immediate and heavy financial need of the Participant. An immediate and heavy financial need of the Participant means a financial need on account of:

- (a) expenses previously incurred by or necessary to obtain for the Participant, the Participant's spouse, or any dependent of the Participant (as defined in Section 152 of the Code) medical care described in Section 213(d) of the Code;
- (b) costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (c) payment of tuition, related educational fees, and room and board expenses for the next 12 months of post-secondary education for the Participant, the Participant's spouse, or any dependent of the Participant; or
- (d) the need to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence.

A withdrawal shall be deemed to be necessary to satisfy an immediate and heavy financial need of a Participant only if all of the following requirements are satisfied:

The withdrawal is not in excess of the amount of the immediate and heavy financial need of the Participant.

The Participant has obtained all distributions, other than hardship distributions, and all non-taxable loans currently available under all plans maintained by an Employer or any Related Company.

The Participant's Tax-Deferred Contributions and the Participant's elective tax-deferred contributions and employee after-tax contributions under all other tax-qualified plans maintained by an Employer or any Related Company shall be suspended for at least twelve months after his receipt of the withdrawal.

The Participant shall not make Tax-Deferred Contributions or elective tax-deferred contributions under any other tax-qualified plan maintained by an Employer or any Related Company for the Participant's taxable immediately following the taxable year of the withdrawal in excess of the applicable limit under Section 402(g) of the Code for such next taxable year less the amount of the Participant's Tax-Deferred Contributions and elective tax-deferred contributions under any other plan maintained by an Employer or any Related Company for the taxable year of the withdrawal.

The minimum hardship withdrawal that a Participant may make is \$1,000. The amount of hardship withdrawal may include any amounts necessary to pay any Federal, state or local income taxes or penalties reasonably anticipated to result from the distribution. A Participant shall not fail to be treated as an Eligible Employee for purposes of applying the limitations contained in Article VII of the Plan merely because his Tax-Deferred Contributions are suspended in accordance with this Section.

#### 13.4 Order of Withdrawal from a Participant's Sub-Accounts.

Distribution of a withdrawal amount shall be made from a Participant's Sub-Accounts, to the extent necessary, in the order prescribed by the Administrator, which order shall be uniform with respect to all Participants and non-discriminatory. If the Sub-Account from which a Participant is receiving a withdrawal is invested in more than one Investment Fund, the withdrawal shall be charged against the Investment Funds as directed by the Administrator.

ARTICLE XIV  
TERMINATION OF EMPLOYMENT AND SETTLEMENT DATE

14.1 Termination of Employment and Settlement Date

A Participant's Settlement Date shall occur on the date he terminates employment with an Employer and all Related Companies because of death, disability, retirement, or other termination of employment. Written notice of a Participant's Settlement Date shall be given by the Administrator to the Trustee.

14.2 Separate Accounting for Non-Vested Amounts

If as of a Participant's Settlement Date the Participant's vested interest in his Employer Contributions Sub-Account is less than 100 percent, that portion of his Employer contributions Sub-Account that is not vested shall be accounted for separately from the vested portion and shall be disposed of as provided in the following Section.

14.3 Disposition of Non-Vested Amounts

That portion of a Participant's Employer Contributions Sub-Account that is not vested upon the occurrence of his Settlement Date shall be disposed of as follows:

- (a) If the Participant has no vested interest in his Separate Account upon the occurrence of his Settlement Date or his vested interest in his Separate Account as of the date of distribution does not exceed \$3,500 resulting in the Participant's receipt of a single sum payment of such vested interest, the non-vested balance remaining in the Participant's Employer Contributions Sub-Account will be forfeited and his Separate Account closed as of (i) the Participant's Settlement Date, if the Participant has no vested interest in his Separate Account, or (ii) the date the single sum payment occurs.
- (b) If the Participant's vested interest in his Separate Account exceeds \$3,500 and the Participant is eligible for and consents in writing to a single sum payment of his vested interest in his Separate Account, the non-vested balance remaining in the Participant's Employer Contributions Sub-Account will be forfeited and his Separate Account closed as of the date the single sum payment occurs, provided that such distribution occurs prior to the end of the second Plan Year beginning on or after the Participant's Settlement Date.
- (c) If neither paragraph (a) nor paragraph (b) is applicable, the non-vested portion of the Participant's Employer Contributions Sub-Account will continue to be held in such Sub-Account and will not be forfeited until the end of the five-year period beginning on his Settlement Date.

Whenever the non-vested portion of a Participant's Employer Contributions Sub-Account is forfeited under the provisions of the Plan with respect to a Plan Year, the amount of such forfeiture, as of the last day of the Plan Year, shall be applied first against Plan expenses for the Plan Year and then against the Employer Contribution obligations for the Plan Year of the Employer for which the Participant last performed services as an Employee. Notwithstanding the foregoing, however, should the amount of all such forfeitures for any Plan Year with respect to any Employer exceed the amount of such Employer's Employer Contribution obligation for the Plan Year, the excess amount of such forfeitures shall be held unallocated in a suspense account

established with respect to the Employer and shall for all Plan purposes be applied against the Employer's Employer Contribution obligations for the following Plan Year.

#### 14.4 Recrediting of Forfeited Amounts

A former Participant who forfeited the non-vested portion of his Employer Contributions Sub-Account in accordance with the provisions of this Article and who is reemployed by an Employer or a Related Company shall have such forfeited amounts recredited to a new Separate Account in his name, without adjustment for interim gains or losses experienced by the Trust, if:

- (a) he returns to employment with an Employer or a Related Company before the end of the five-year period beginning on the later of his Settlement Date or the date he received distribution of his vested interest in his Separate Account;
- (b) he resumes employment covered under the Plan before the end of the five-year period beginning on the date he is reemployed; and
- (c) if he received distribution of his vested interest in his Separate Account, he repays to the Plan the full amount of such distribution before the end of the five-year period beginning on the date he is reemployed.

Funds needed in any Plan Year to recredit the Separate Account of a Participant with the amounts of prior forfeitures in accordance with the preceding sentence shall come first from forfeitures that arise during such Plan Year, and then from Trust income earned in such Plan Year, with each Trust Fund being charged with the amount of such income proportionately, unless his Employer chooses to make an additional Employer Contribution, and shall finally be provided by his Employer by way of a separate Employer Contribution.

ARTICLE XV  
DISTRIBUTIONS

15.1 Distributions to Participants

A Participant whose Settlement Date occurs shall receive distribution of his vested interest in his Separate Account in the form provided under Article XVI beginning as soon as reasonably practicable following his Settlement Date or the date his application for distribution is filed with the Administrator, if later. In addition, a Participant who continues in employment with an Employer or a Related Company after his Normal Retirement Date may elect to receive distribution of all or any portion of his Separate Account in the form provided under Article XVI at any time following his Normal Retirement Date.

15.2 Distributions to Beneficiaries

If a Participant dies prior to the date distribution of his vested interest in his Separate Account begins under this Article, his Beneficiary shall receive distribution of the Participant's vested interest in his Separate Account in the form provided under Article XVI beginning as soon as reasonably practicable following the date the Beneficiary's application for distribution is filed with the Administrator. Unless distribution is to be made over the life or over a period certain not greater than the life expectancy of the Beneficiary, distribution of the Participant's entire vested interest shall be made to the Beneficiary no later than the end of the fifth calendar year beginning after the Participant's death. If distribution is to be made over the life or over a period certain no greater than the life expectancy of the Beneficiary, distribution shall commence no later than:

- (a) If the Beneficiary is not the Participant's spouse, the end of the first calendar year beginning after the Participant's death; or
- (b) If the Beneficiary is the Participant's spouse, the later of (i) the end of the first calendar year beginning after the Participant's death or (ii) the end of the calendar year in which the Participant would have attained age 70 1/2.

If distribution is to be made to a Participant's spouse, it shall be made available within a reasonable period of time after the Participant's death that is no less favorable than the period of time applicable to other distributions. If a Participant dies after the date distribution of his vested interest in his Separate Account begins under this Article, but before his entire vested interest in his Separate Account is distributed, his Beneficiary shall receive distribution of the remainder of the Participant's vested interest in his Separate Account beginning as soon as reasonably practicable following the Participant's date of death in a form that provides for distribution at least as rapidly as under the form in which the Participant was receiving distribution.

15.3 Cash Outs and Participant Consent

Notwithstanding any other provision of the Plan to the contrary, if a Participant's vested interest in his Separate Account does not exceed \$3,500, distribution of such vested interest shall be made to the Participant in a single sum payment as soon as reasonably practicable following his Settlement Date. If a Participant's vested interest in his Separate Account is \$0, he shall be deemed to have received distribution of such vested interest as of his Settlement Date. If a Participant's vested interest in his Separate Account exceeds \$3,500, distribution shall not commence to such Participant prior to his Normal Retirement Date without the Participant's written consent and the written consent of his spouse if the Participant's Separate Account is

subject to the qualified joint and survivor annuity provisions under Article XVI and payment is not made through the purchase of a qualified joint and survivor annuity. If at the time of a distribution or deemed distribution to a Participant from his Separate Account, the Participant's vested interest in his Separate Account exceeded \$3,500, then for purposes of this Section, the Participant's vested interest in his Separate Account on any subsequent date shall be deemed to exceed \$3,500.

#### 15.4 Required Commencement of Distribution

Notwithstanding any other provision of the Plan to the contrary, distribution of a Participant's vested interest in his Separate Account shall commence to the Participant no later than the earlier of:

- (a) 60 days after the close of the Plan Year in which (i) the Participant's Normal Retirement Date occurs, (ii) the 10th anniversary of the year in which he commenced participation in the Plan occurs, or (iii) his Settlement Date occurs, whichever is latest; or
- (b) the April 1 following the close of the calendar year in which he attains age 70 1/2, whether or not his Settlement Date has occurred, except that if a Participant attained age 70 1/2 prior to January 1, 1988, and was not a five-percent owner (as defined in Section 416 of the Code) at any time during the five-Plan-Year period ending within the calendar year in which he attained age 70 1/2, distribution of such Participant's vested interest in his Separate Account shall commence no later than the April 1 following the close of the calendar year in which he attains age 70 1/2 or retires, whichever is later.

Distributions required to commence under this Section shall be made in the form provided under Article XVI and in accordance with Section 401(a) (9) of the Code and regulations issued thereunder, including the minimum distribution incidental benefit requirements.

#### 15.5 Reemployment of a Participant

If a Participant whose Settlement Date has occurred is reemployed by an Employer or a Related Company, he shall lose his right to any distribution or further distributions from the Trust arising from his prior Settlement Date and his interest in the Trust shall thereafter be treated in the same manner as that of any other Participant whose Settlement Date has not occurred.

#### 15.6 Restrictions on Alienation

Except as provided in Section 401(a) (13) of the Code relating to qualified domestic relations orders and Section 1.401(a) - 13(b) (2) of Treasury regulations relating to Federal tax levies and judgments, no benefit under the Plan at any time shall be subject in any manner to anticipation, alienation, assignment (either at law or in equity), encumbrance, garnishment, levy, execution, or other legal or equitable process; and no person shall have power in any manner to anticipate, transfer, assign (either at law or in equity), alienate or subject to attachment, garnishment, levy, execution, or other legal or equitable process, or in any way encumber his benefits under the Plan, or any part thereof, and any attempt to do so shall be void.



### 15.7 Facility of Payment

If the Administrator finds that any individual to whom an amount is payable hereunder is incapable of attending to his financial affairs because of any mental or physical condition, including the infirmities of advanced age, such amount (unless prior claim therefore shall have been made by a duly qualified guardian or other legal representative) may, in the discretion of the Administrator, be paid to another person for the use or benefit of the individual found incapable of attending to his financial affairs or in satisfaction of legal obligations incurred by or on behalf of such individual. The Trustee shall make such payment only upon receipt of written instructions to such effect from the Administrator. Any such payment shall be charged to the Separate Account from which any such payment would otherwise have been paid to the individual found incapable of attending to his financial affairs and shall be a complete discharge of any liability therefore under the Plan.

### 15.8 Inability to Locate Payee

If any benefit becomes payable to any person, or to the executor or administrator of any deceased person, and if that person or his executor or administrator does not present himself to the Administrator within a reasonable period after the Administrator mails written notice of his eligibility to receive a distribution hereunder to his last known address and makes such other diligent effort to locate the person as the Administrator determines, that benefit will be forfeited. However, if the payee later files a claim for that benefit, the benefit will be restored.

### 15.9 Distribution Pursuant to Qualified Domestic Relations Orders

Notwithstanding any other provision of the Plan to the contrary, if a qualified domestic relations order so provides, distribution may be made to an alternate payee pursuant to a qualified domestic relations order, as defined in Section 414(p) of the Code, regardless of whether the Participant's Settlement Date has occurred or whether the Participant is otherwise entitled to receive a distribution under the Plan.

ARTICLE XVI  
FORM OF PAYMENT

16.1 Definitions

For purposes of this Article, the following terms have the following meanings:

- (a) A Participant's "annuity starting date" means the first day of the first period for which an amount is paid as an annuity or any other form.
- (b) The "automatic annuity form" means the form of annuity that will be purchased on behalf of a Participant who has elected the optional annuity form of payment unless the Participant elects another form of annuity.
- (c) A "qualified election" means an election that is made during the qualified election period. A qualified election of a form of payment other than a qualified joint and survivor annuity or designating a Beneficiary other than the Participant's spouse to receive amounts otherwise payable as a qualified preretirement survivor annuity must include the written consent of the Participant's spouse, if any. A Participant's spouse will be deemed to have given written consent to the Participant's election if the Participant establishes to the satisfaction of a Plan representative that spousal consent cannot be obtained because the spouse cannot be located or because of other circumstances set forth in Section 401(a) (11) of the Code and regulations issued thereunder. The spouse's written consent must acknowledge the effect of the Participant's election and must be witnessed by a Plan representative or a notary public. In addition, the spouse's written consent must either (i) specify the form of payment selected instead of a joint and survivor annuity, if applicable, and that such form may not be changed (except to a qualified joint and survivor annuity) without written spousal consent and specify any non-spouse Beneficiary designated by the Participant, if applicable, and that such Beneficiary may not be changed without written spousal consent or (ii) acknowledge that the spouse has the right to limit consent as provided in clause (i), but permit the Participant to change the form of payment selected or the designated Beneficiary without the spouse's further consent. Any written consent given or deemed to have been given by a Participant's spouse hereunder shall be irrevocable and shall be effective only with respect to such spouse and not with respect to any subsequent spouse.
- (d) The "qualified election period" with respect to the automatic annuity form means the 90 day period ending on a Participant's annuity starting date. The "qualified election period" with respect to a qualified preretirement survivor annuity means the period beginning on the later of (i) the date he elects an annuity form of payment or (ii) the first day of the Plan Year in which the Participant attains age 35 or, if he terminates employment prior to such date, the day he terminates employment with his Employer and all Related Companies. A Participant whose employment has not terminated may make a qualified election designating a Beneficiary other than his spouse prior to the Plan Year in which he attains age 35; provided, however, that such election shall cease to be effective as of the first day of the Plan Year in which the Participant attains age 35.

- (e) A "qualified joint and survivor annuity" means an immediate annuity payable at earliest retirement age under the Plan, as defined in regulations issued under Section 401(a) (11) of the Code, for the life of a Participant with a survivor annuity payable for the life of the Participant's spouse that is equal to at least 50 percent of the amount of the annuity payable during the joint lives of the Participant and his spouse, provided that the survivor annuity shall not be payable to a Participant's spouse if such spouse is not the same spouse to whom the Participant was married on his annuity starting date.
- (f) A "qualified preretirement survivor annuity" means an annuity payable to the surviving spouse of a Participant in accordance with the provisions of Section 16.6.
- (g) A "single life annuity" means an annuity payable for the life of the Participant.

#### 16.2 Normal Form of Payment

Except as otherwise provided in Section 16.6, unless a Participant, or his Beneficiary, if the Participant has died, elects the option form of payment, distribution shall be made to the Participant, or his Beneficiary, as the case may be, in a single sum payment. Distribution of the fair market value of the Participant's Separate Account shall be made in cash or in kind, as elected by the Participant.

#### 16.3 Optional Form of Payment

A Participant, or his Beneficiary, as the case may be, may elect to receive distribution through the purchase of a single premium, nontransferable annuity contract for such term and in such form as the Participant, or his Beneficiary, if the Participant has died, shall select, subject to the provisions of Section 16.5; provided, however, that a Participant's Beneficiary may not elect to receive distribution of an annuity payable over the joint lives of the Beneficiary and any other individual. The terms of any annuity contract purchased hereunder and distributed to a Participant or his Beneficiary shall comply with the requirements of the Plan.

#### 16.4 Change of Option Election

Subject to the provisions of Section 16.5, a Participant or Beneficiary who has elected the optional form of payment may revoke or change his election at any time prior to his annuity starting date by filing with the Administrator a written election in the form prescribed by the Administrator.

#### 16.5 Form of Annuity Requirements

If a Participant elects to receive distribution through the purchase of an annuity contract, distribution shall be made to such Participant through the purchase of an annuity contract that provides for payment in one of the following automatic annuity forms, unless the Participant elects a different type of annuity:

- (a) The automatic annuity form for a Participant who is married on his annuity starting date is the 50 percent qualified joint and survivor annuity.
- (b) The automatic annuity form for a Participant who is not married on his annuity starting date is the single life annuity.

A Participant's election of an annuity other than the automatic annuity form shall not be effective unless it is a qualified election; provided, however, that spousal consent shall not be required if the form of annuity elected by the Participant is a qualified joint and survivor annuity. A Participant who has elected the optional annuity form of payment can revoke or change his elections only pursuant to a qualified election.

#### 16.6 Qualified Preretirement Survivor Annuity Requirements

If a married Participant elects to receive distribution through the purchase of an annuity contract and dies before his annuity starting date, his spouse shall receive distribution of the value of the Participant's vested interest in his Separate Account through the purchase of an annuity contract that provides for payment over the life of the Participant's spouse. A Participant's spouse may elect to receive distribution under any one of the other forms of payment available under this Article instead of in the qualified preretirement survivor annuity form. If a married Participant's Beneficiary designation on file with the Administrator pursuant to Article XVII designates a non-spouse Beneficiary, the designation shall become inoperative upon the Participant's election to receive distribution through the purchase of an annuity contract, unless the Participant files a new designation of Beneficiary form with the Administrator. A Participant can only designate a non-spouse Beneficiary to receive distribution of that portion of his Separate Account otherwise payable as a qualified preretirement survivor annuity pursuant to a qualified election.

#### 16.7 Direct Rollover

Notwithstanding any other provision of the Plan to the contrary, in lieu of receiving distribution in the form of payment provided under this Article, a "qualified distributee" may elect in writing, in accordance with rules prescribed by the Administrator, to have any portion or all of a distribution made on or after January 1, 1993, that is an "eligible rollover distribution" paid directly by the Plan to the "eligible retirement plan" designated by the "qualified distributee"; provided, however, that this provision shall not apply if the total distribution is less than \$200 and that a "qualified distributee" may not elect this provision with respect to a portion of a distribution that is less than \$500. Any such payment by the Plan to another "eligible retirement plan" shall be a direct rollover and shall be made only after all applicable consent requirements are satisfied. For purpose of this Section, the following terms have the following meanings:

- (a) An "eligible retirement plan" means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code that accepts rollovers; provided, however, that, in the case of a direct rollover by a surviving spouse, an eligible retirement plan does not include a qualified trust described in Section 401(a) of the Code.
- (b) An "eligible rollover distribution" means any distribution of all or any portion of the balance of a Participant's Separate Account; provided, however, that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the qualified distributee or the joint lives or joint life expectancies of the qualified distributee and qualified distributee's designated beneficiary, or for a specified period of ten years or more; and any distribution to the extent such distribution is required under Section 401(a) (9) of the Code.

- (c) A "qualified distributee" means a Participant, his surviving spouse, or his spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code.

#### 16.8 Notice Regarding Forms of Payment

Within the 60 day period ending 30 days before a Participant's annuity starting date, the Administrator shall provide him with a written explanation of his right to defer distribution until his Normal Retirement Date, or such later date as may be provided in the Plan, his right to make a direct rollover, and the forms of payment available under the Plan, including a written explanation of (i) the terms and conditions of the automatic annuity form applicable if the Participant elects to receive distribution through the purchase of an annuity contract, (ii) the Participant's right to choose a form of payment other than the automatic annuity form or to revoke such choice, and (iii) the rights of the Participant's spouse. Notwithstanding the foregoing, distribution of the Participant's Separate Account may commence less than 30 days after such notice is provided to the Participant if (i) the Administrator clearly informs the Participant of his right to consider his election of whether or not to make a direct rollover and his election of a form of payment for a period of at least 30 days following his receipt of the notice, (ii) the Participant, after receiving the notice, affirmatively elects an early distribution with his spouse's written consent, if necessary, (iii) the Participant's annuity starting date is a date after the date the notice is provided to him, (iv) the Participant may revoke his election at any time prior to the later of his annuity starting date or the expiration of the seven-day period beginning the day after the date the notice is provided to him, and (v) distribution does not commence to the Participant before such revocation period ends.

In addition, the Administrator shall provide such a Participant with a written explanation of (i) the terms and conditions of the qualified preretirement survivor annuity, (ii) the Participant's right to designate a non-spouse Beneficiary to receive distribution of that portion of his Separate Account otherwise payable as a qualified preretirement survivor annuity or to revoke such designation, and (iii) the rights of the Participant's spouse. The Administrator shall provide such explanation within one of the following periods, whichever ends last:

- (a) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending on the last day of the Plan Year preceding the Plan Year in which the Participant attains age 35;
- (b) the period beginning 12 calendar months before the date an individual becomes a Participant and ending 12 calendar months after such date; or
- (c) the period beginning 12 calendar months before the date the Participant elects to receive distribution through the purchase of an annuity contract and ending 12 calendar months after such date;

provided, however, that in the case of a Participant who separates from service prior to attaining age 35, the explanation shall be provided to such Participant within the period beginning 12 calendar months before the Participant's separation from service and ending 12 calendar months after his separation from service.

#### 16.9 Reemployment

If a Participant is reemployed by an Employer or a Related Company prior to receiving distribution of the entire balance of his vested interest in his Separate Account, his prior election of a form of payment hereunder shall become ineffective. Notwithstanding the foregoing, if a Participant had elected to receive distribution through the purchase of an annuity contract, the requirements of Sections 16.5 and 16.6 of the Plan shall continue in effect to his entire Separate Account.

ARTICLE XVII  
BENEFICIARIES

17.1 Designation of Beneficiary

A married Participant's Beneficiary shall be his spouse, unless the Participant designates a person or persons other than his spouse as Beneficiary with his spouse's written consent. A Participant may designate a Beneficiary on the form prescribed by the Administrator. If no Beneficiary has been designated pursuant to the provisions of this Section, or if no Beneficiary survives the Participant and he has no surviving spouse, then the Beneficiary under the Plan shall be the Participant's estate. If a Beneficiary dies after becoming entitled to receive a distribution under the Plan but before distribution is made to him in full, and if no other Beneficiary has been designated to receive the balance of the distribution in that event, the estate of the deceased Beneficiary shall be the Beneficiary as to the balance of the distribution. A Participant's designation of a Beneficiary shall be subject to the qualified preretirement survivor annuity provisions of Article XVI.

17.2 Spousal Consent Requirements

Any written spousal consent given pursuant to this Article must acknowledge the effect of the action taken and must be witnessed by a Plan representative or a notary public. In addition, the spouse's written consent must either (i) specify any non-spouse Beneficiary designated by the Participant and that such Beneficiary may not be changed without written spousal consent or (ii) acknowledge that the spouse has the right to limit consent to a specific Beneficiary, but permit the Participant to change the designated Beneficiary without the spouse's further consent. A Participant's spouse will be deemed to have given written consent to the Participant's designation of Beneficiary if the Participant establishes to the satisfaction of a Plan representative that such consent cannot be obtained because the spouse cannot be located or because of other circumstances set forth in Section 401(a) (11) of the Code and regulations issued thereunder. Any written consent given or deemed to have been given by a Participant's spouse hereunder shall be valid only with respect to the spouse who signs the consent.

ARTICLE XVIII  
ADMINISTRATION

18.1 Authority of the Sponsor

The Sponsor, which shall be the administrator for purposes of ERISA and the plan administrator for purposes of the Code, shall be responsible for the administration of the Plan and, in addition to the power and authorities expressly conferred upon it in the Plan, shall have all such powers and authorities as may be necessary to carry out the provisions of the Plan, including the power and authority to interpret and construe the provisions of the Plan, to make benefit determinations, and to resolve any disputes which arise under the Plan. The Sponsor may employ such attorneys, agents, and accountants as it may deem necessary or advisable to assist in carrying out its duties hereunder. The Sponsor shall be a "named fiduciary" as that term is defined in Section 402(a) (2) of ERISA. The Sponsor may:

- (a) allocate any of the powers, authority, or responsibilities for the operation and administration of the Plan (other than trustee responsibilities as defined in Section 405(c) (3) of ERISA) among named fiduciaries, and
- (b) designate a person or persons other than a named fiduciary to carry out any of such powers, authority, or responsibilities;

except that no allocation by the Sponsor of, or designation by the Sponsor with respect to, any of such powers, authority, or responsibilities to another named fiduciary or a person other than a named fiduciary shall become effective unless such allocation or designation shall first be accepted by such named fiduciary or other person in a writing signed by it and delivered to the Sponsor.

18.2 Action of the Sponsor

Any act authorized, permitted, or required to be taken under the Plan by the Sponsor and which has not been delegated in accordance with Section 18.1, may be taken by a majority of the members of the board of directors of the Sponsor, either by vote at a meeting, or in writing without a meeting, or by the employee or employees of the Sponsor designated by the board of directors to carry out such acts on behalf of the Sponsor. All notices, advice, directions, certifications, approvals, and instruction required or authorized to be given by the Sponsor as under the Plan shall be in writing and signed by either (i) a majority of the members of the board of directors of the Sponsor or by such member or members as may be designated by an instrument in writing, signed by all the members thereof, as having authority to execute such document on its behalf, or (ii) the employee or employees authorized to act for the sponsor in accordance with the provisions of this Section.

18.3 Claims Review Procedure

Whenever a claim for benefits under the Plan filed by any person (herein referred to as the "Claimant") is denied, whether in whole or in part, the Sponsor shall transmit a written notice of such decision to the claimant within 90 days of the date the claim was filed or, if special circumstances require an extension, within 180 days of such date, which notice shall be written in a manner calculated to be understood by the Claimant and shall contain a statement of (i) the specific reasons for the denial of the claim, (ii) specific reference to pertinent Plan provisions on which the denial is based, and (iii) a description of any additional material or information



necessary for the Claimant to perfect the claim and an explanation of why such information is necessary. The notice shall also include a statement advising the Claimant that, within 60 days of the date on which he receives such notice, he may obtain review of such decision in accordance with the procedures hereinafter set forth. Within such 60-day period, the Claimant or his authorized representative may request that the claim denial be reviewed by filing with the Sponsor a written request therefor, which request shall contain the following information:

- (a) the date on which the Claimant's request was filed with the Sponsor; provided, however, that the date on which the Claimant's request for review was in fact filed with the Sponsor shall control in the event that the date of the actual filing is later than the date stated by the Claimant pursuant to this paragraph;
- (b) the specific portions of the denial of his claim which the Claimant requests the Sponsor to review;
- (c) a statement by the Claimant setting forth the basis upon which he believes the Sponsor should reverse the previous denial of his claim for benefits and accept his claim as made; and
- (d) any written material (offered as exhibits) which the Claimant desires the Sponsor to examine in its consideration of his position as stated pursuant to paragraph (c) of this Section.

Within 60 days of the date determined pursuant to paragraph (a) of this Section or, if special circumstances require an extension, within 120 days of such date, the Sponsor shall conduct a full and fair review of the decision denying the Claimant's claim for benefits and shall render its written decision on review to the Claimant. The Sponsor's decision on review shall be written in a manner calculated to be understood by the Claimant and shall specify the reasons and Plan provisions upon which the Sponsor's decision was based.

#### 18.4 Qualified Domestic Relations Orders

The Sponsor shall establish reasonable procedures to determine the status of domestic relations orders and to administer distributions under domestic relations orders which are deemed to be qualified orders. Such procedures shall be in writing and shall comply with the provisions of Section 414(p) of the Code and regulations issued thereunder.

#### 18.5 Indemnification

In addition to whatever rights of indemnification the members of the board of directors of the Sponsor or any employee or employees of the Sponsor to whom any power, authority, or responsibility is delegated pursuant to Section 18.2, may be entitled under the articles of incorporation or regulations of the Sponsor, under any provision of law, or under any other agreement, the Sponsor shall satisfy any liability actually and reasonably incurred by any such person or persons, including expenses, attorneys' fees, judgments, fines, and amounts paid in settlement (other than amounts paid in settlement not approved by the Sponsor), in connection with any threatened, pending or completed action, suit, or proceeding which is related to the exercising or failure to exercise by such person or persons of any of the powers, authority, responsibilities, or discretion as provided under the Plan, or reasonably believed by such person or persons to be provided hereunder, and any action taken by such person or persons in

connection therewith, unless the same is judicially determined to be the result of such person or persons' gross negligence or willful misconduct.

#### 18.6 Actions Binding

Subject to the provisions of Section 18.3, any action taken by the Sponsor which is authorized, permitted, or required under the Plan shall be final and binding upon the Employers, the Trustee, all persons who have or who claim an interest under the Plan, and all third parties dealing with the Employers or the Trustee.

ARTICLE XIX  
AMENDMENT AND TERMINATION

19.1 Amendment

Subject to the provisions of Section 19.2, the Sponsor may at any time and from time to time, by action of its board of directors, or such officers of the Sponsor as are authorized by its board of directors, amend the Plan, either prospectively or retroactively. Any such amendment shall be by written instrument executed by the Sponsor.

19.2 Limitation on Amendment

The Sponsor shall make no amendment to the Plan which shall decrease the accrued benefit of any Participant or Beneficiary, except that nothing contained herein shall restrict the right to amend the provisions of the Plan relating to the administration of the Plan and Trust. Moreover, no such amendment shall be made hereunder which shall permit any part of the Trust to revert to an Employer or any Related Company or be used or be diverted to purposes other than the exclusive benefit of Participants and Beneficiaries.

19.3 Termination

The Sponsor reserves the right, by action of its board of directors, to terminate the Plan as to all Employers at any time (the effective date of such termination being hereinafter referred to as the "termination date"). Upon any such termination of the Plan, the following actions shall be taken for the benefit of Participants and Beneficiaries:

- (a) As of the termination date, each Investment Fund shall be valued and all Separate Accounts and Sub-Accounts shall be adjusted in the manner provided in Article XI, with any unallocated contributions or forfeitures being allocated as of the termination date in the manner otherwise provided in the Plan. The termination date shall become a Valuation Date for purposes of Article XI. In determining the net worth of the Trust, there shall be included as a liability such amounts as shall be necessary to pay all expenses in connection with the termination of the Trust and the liquidation and distribution of the property of the Trust, as well as other expenses, whether or not accrued, and shall include as an asset all accrued income.
- (b) All Separate Accounts shall then be disposed of to or for the benefit of each Participant or Beneficiary in accordance with the provisions of Article XV as if the termination date were his Settlement Date; provided, however, that notwithstanding the provisions of Article XV, if the Plan does not offer an annuity option and if neither his Employer nor a Related Company establishes or maintains another defined contribution plan (other than an employee stock ownership plan as defined in Section 4975(e) (7) of the Code), the Participant's written consent to the commencement of distribution shall not be required regardless of the value of the vested portions of his Separate Account.
- (c) Notwithstanding the provisions of paragraph (b) of this Section, no distribution shall be made to a Participant of any portion of the balance of his Tax-Deferred Contributions Sub-Account prior to his separation from service (other than a distribution made in accordance with Article XIII or required in accordance with Section 401(a) (9) of the Code) unless (i) neither his Employer nor a Related Company establishes or maintains another defined contribution Plan (other than an employee stock ownership plan as

defined in Section 4975(e) (7) of the Code, a tax credit employee stock ownership plan as defined in Section 409 of the Code, or a simplified employee pension as defined in Section 408(k) of the Code) either at the time the Plan is terminated or at any time during the period ending 12 months after distribution of all assets from the Plan; provided, however, that this provision shall not apply if fewer than two percent of the Eligible Employees under the Plan were eligible to participate at any time in such other defined contribution plan during the 24-month period beginning 12 months before the Plan termination, and (ii) the distribution the Participant receives is a "lump sum distribution" as defined in Section 402(e) (4) of the Code, without regard to clauses (i), (ii), (iii), and (iv) of sub-paragraph (A), sub-paragraph (B), or sub-paragraph (H) thereof.

Notwithstanding anything to the contrary contained in the Plan, upon any such Plan termination, the vested interest of each Participant and Beneficiary in his Employer Contributions Sub-Account shall be 100 percent; and, if there is a partial termination of the Plan, the vested interest of each Participant and Beneficiary who is affected by the partial termination in his Employer Contributions Sub-Account shall be 100 percent. For purposes of the preceding sentence only, the Plan shall be deemed to terminate automatically if there shall be a complete discontinuance of contributions hereunder by all Employers.

#### 19.4 Reorganization

The merger, consolidation, or liquidation of any Employer with or into any other Employer or a Related Company shall not constitute a termination of the Plan as to such Employer. If an Employer disposes of substantially all of the assets used by the Employer in a trade or business or disposes of a subsidiary and in connection therewith one or more Participants terminates employment but continues in employment with the purchaser of the assets or with such subsidiary, no distribution from the Plan shall be made to any such Participant prior to his separation from service (other than a distribution made in accordance with Article XIII or required in accordance with Section 401(a) (9) of the Code), except that a distribution shall be permitted to be made in such a case, subject to the Participant's consent (to the extent required by law), if (i) the distribution would constitute a "lump sum distribution" as defined in Section 402(e) (4) of the Code, without regard to clauses (i), (ii), (iii), or (iv) of sub-paragraph (A), sub-paragraph (B), or sub-paragraph (H) thereof, (ii) the Employer continues to maintain the Plan after the disposition, (iii) the purchaser does not maintain the Plan after the disposition, and (iv) the distribution is made by the end of the second calendar year after the calendar year in which the disposition occurred.

#### 19.5 Withdrawal of an Employer

An Employer other than the Sponsor may withdraw from the Plan at any time upon notice in writing to the Administrator (the effective date of such withdrawal being hereinafter referred to as "withdrawal date"), and shall thereupon cease to be an Employer for all purposes of the Plan. An Employer shall be deemed automatically to withdraw from the Plan in the event of its complete discontinuance of contributions, or, subject to Section 19.4 and unless the Sponsor otherwise directs, it ceases to be a Related Company of the Sponsor or any other Employer. Upon the withdrawal of an Employer, the withdrawing Employer shall determine whether a partial termination has occurred with respect to its Employees. In the event that the withdrawing Employer determines a partial termination has occurred, the action specified in Section 19.3 shall be taken as of the withdrawal date, as on a termination of the Plan, but with respect only to Participants who are employed solely by the withdrawing Employer, and who, upon such withdrawal, are neither transferred to nor continued in employment with any other Employer or a

Related Company. The interest of any Participant employed by the withdrawing Employer who is transferred to or continues in employment with any other Employer or a Related Company, and the interest of any Participant employed solely by an Employer or a Related Company other than the withdrawing Employer, shall remain unaffected by such withdrawal; no adjustment to his Separate Accounts shall be made by reason of the withdrawal; and he shall continue as a Participant hereunder subject to the remaining provisions of the Plan.

ARTICLE XX  
ADOPTION BY OTHER ENTITIES

20.1 Adoption by Related Companies

A Related Company that is not an Employer may, with the consent of the Sponsor, adopt the Plan and become an Employer hereunder by causing an appropriate written instrument evidencing such adoption to be executed in accordance with the requirements of its organizational authority. Any such instrument shall specify the effective date of the adoption.

20.2 Effective Plan Provisions

An Employer who adopts the Plan shall be bound by the provisions of the Plan in effect at the time of the adoption and as subsequently in effect because of any amendment to the Plan.

ARTICLE XXI  
MISCELLANEOUS PROVISIONS

21.1 No Commitment as to Employment

Nothing contained herein shall be construed as a commitment or agreement upon the part of any person to continue his employment with an Employer or Related Company, or as a commitment on the part of any Employer or Related Company to continue the employment, compensation, or benefits of any person for any period.

21.2 Benefits

Nothing in the Plan nor the Trust Agreement shall be construed to confer any right or claim upon any person, firm, or corporation other than the Employers, the Trustee, Participants, and Beneficiaries.

21.3 No Guarantees

The Employers, the Administrator, and the Trustee do not guarantee the Trust from loss or depreciation, nor do they guarantee the payment of any amount which may become due to any person hereunder.

21.4 Expenses

The expenses of administration of the Plan, including the expenses of the Administrator and fees of the Trustee, shall be paid from the Trust as a general charge thereon, unless the Sponsor elects to make payment. Notwithstanding the foregoing, the Sponsor may direct that administrative expenses that are allocable to the Separate Account of a specific Participant shall be paid from that Separate Account and the costs incident to the management of the assets of an Investment Fund or to the purchase or sale of securities held in an Investment Fund shall be paid by the Trustee from such Investment Fund.

21.5 Precedent

Except as otherwise specifically provided, no action taken in accordance with the Plan shall be construed or relied upon as a precedent for similar action under similar circumstances.

21.6 Duty to Furnish Information

The Employers, the Administrator, and the Trustee shall furnish to any of the others any documents, reports, returns, statements, or other information that the other reasonably deems necessary to perform its duties hereunder or otherwise imposed by law.

21.7 Withholding

The Trustee shall withhold any tax which by any present or future law is required to be withheld, and which the Administrator notifies the Trustee in writing is to be so withheld, from any payment to any Participant or Beneficiary hereunder.

## 21.8 Merger, Consolidation, or Transfer of Plan Assets

The Plan shall not be merged or consolidated with any other plan, nor shall any of its assets or liabilities be transferred to another plan, unless, immediately after such merger, consolidation, or transfer of assets or liabilities, each Participant in the Plan would receive a benefit under the Plan which is at least equal to the benefit he would have received immediately prior to such merger, consolidation, or transfer of assets or liabilities (assuming in each instance that the Plan had then terminated).

## 21.9 Back Pay Awards

The provisions of this Section shall apply only to an Employee who becomes entitled to back pay by an award or agreement of an Employer without regard to mitigation of damages. If a person to whom this Section applies was or would have become an Eligible Employee after such back pay award or agreement has been effected, and if any such person who had not previously elected to make Tax-Deferred Contributions pursuant to Section 4.1 shall within 30 days of the date he receives notice of the provisions of this Section make an election to make Tax-Deferred Contributions in accordance with such Section 4.1 (retroactive to any Enrollment Date as of which he was or has become eligible to do so), then such Participant may elect that any Tax-Deferred Contributions not previously made on his behalf but which, after application of the foregoing provisions of this Section, would have been made under the provisions of Article IV, shall be made out of the proceeds of such back pay award or agreement. In addition, if any such Employee would have been eligible to participate in the allocation of Employer Contributions under the provisions of Article VI for any prior Plan Year after such back pay award or agreement has been effected, his Employer shall make an Employer Contribution equal to the amount of the Employer Contribution which would have been allocated to such Participant under the provisions of Article VI as in effect during each such Plan Year. The amounts of such additional contributions shall be credited to the Separate Account of such Participant. Any additional contributions made by such Participant and by an Employer pursuant to this Section shall be made in accordance with, and subject of the limitations of the applicable provisions of Articles IV, VI, and VII.

## 21.10 Condition on Employer Contributions

Notwithstanding anything to the contrary contained in the Plan or the Trust Agreement, any contribution of an Employer hereunder is conditioned upon the continued qualification of the Plan under Section 401(a) of the Code, the exempt status of the Trust under Section 501(a) of the Code, and the deductibility of the contribution under Section 404 of the Code. Except as otherwise provided in this Section and Section 21.11, however, in no event shall any portion of the property of the Trust ever revert to or otherwise inure to the benefit of an Employer or any Related Company.

## 21.11 Return of Contributions to an Employer

Notwithstanding any other provision of the Plan or the Trust Agreement to the contrary, in the event any contribution of an Employer made hereunder:

- (a) is made under a mistake of fact, or
- (b) is disallowed as a deduction under Section 404 of the Code,



such contribution may be returned to the Employer within one year after the payment of the contribution or the disallowance of the deduction to the extent disallowed, whichever is applicable. In the event the Plan does not initially qualify under Section 401(a) of the Code, any contribution of an Employer made hereunder may be returned to the Employer within one year of the date of denial of the initial qualification of the Plan, but only if an application for determination was made within the period of time prescribed under Section 403(c) (2) (B) of ERISA.

#### 21.12 Validity of Plan

The validity of the Plan shall be determined and the Plan shall be construed and interpreted in accordance with the laws of the State or Commonwealth in which the Sponsor has its principal place of business, except as preempted by applicable Federal law. The invalidity or illegality of any provision of the Plan shall not affect the legality or validity of any other part thereof.

#### 21.13 Trust Agreement

The Trust Agreement and the Trust maintained thereunder shall be deemed to be a part of the Plan as if fully set forth herein and the provisions of the Trust Agreement are hereby incorporated by reference into the Plan.

#### 21.14 Parties Bound

The Plan shall be binding upon the Employers, all Participants and Beneficiaries hereunder, and, as the case may be, the heirs, executors, administrators, successors, and assigns of each of them.

#### 21.15 Application of Certain Plan Provisions

A Participant's Beneficiary, if the Participant has died, or alternate payee under a qualified domestic relations order shall be treated as a Participant for purposes of directing investments as provided in Article X. For purposes of the general administrative provisions and limitations of the Plan, a Participant's Beneficiary or alternate payee under a qualified domestic relations order shall be treated as any other person entitled to receive benefits under the Plan. Upon any termination of the Plan, any such Beneficiary or alternate payee under a qualified domestic relations order who has an interest under the Plan at the time of such termination, which does not cease by reason thereof, shall be deemed to be a Participant for all purposes of the Plan.

#### 21.16 Leased Employees

Any leased employee, other than an excludable leased employee, shall be treated as an employee of the Employer for which he performs services for all purposes of the Plan with respect to the provisions of Sections 401(a) (3), (4), (7), and (16), and 408(k), 410, 411, 415, and 416 of the Code; provided, however, that no leased employee shall accrue a benefit hereunder based on service as a leased employee except as otherwise specifically provided in the Plan. A "leased employee" means any person who performs services for an Employer or a Related Company (the "recipient") (other than an employee of the recipient) pursuant to an agreement between the recipient and any other person (the "leasing organization") on a substantially full-time basis for a period of at least one year, provided that such services are of a type historically performed, in the business field of the recipient, by employees. An "excludable leased employee" means any leased employee of the recipient who is covered by a money purchase pension plan maintained by the leasing organization which provides for (i) a nonintegrated employer contribution on behalf of

each participant in the plan equal to at least ten percent of compensation, (ii) full and immediate vesting, and (iii) immediate participation by employees of the leasing organization (other than employees who perform substantially all of their services for the leasing organization or whose compensation from the leasing organization in each plan year during the four-year period ending with the plan year is less than \$1,000); provided, however, that leased employees do not constitute more than 20 percent of the recipient's nonhighly compensated work force. For purposes of this Section, contributions or benefits provided to a leased employee by the leasing organization that are attributable to services performed for the recipient shall be treated as provided by the recipient.

#### 21.17 Transferred Funds

If funds from another qualified plan are transferred or merged into the Plan, such funds shall be held and administered in accordance with any restrictions applicable to them under such other plan to the extent required by law and shall be accounted for separately to the extent necessary to accomplish the foregoing.

ARTICLE XXII  
TOP-HEAVY PROVISIONS

22.1 Definitions

For purposes of this Article, the following terms shall have the following meanings:

- (a) The "compensation" of an employee means compensation as defined in Section 415 of the Code and regulations issued thereunder. In no event, however, shall the compensation of a Participant taken into account under the Plan for any Plan Year exceed (1) \$200,000 for Plan Years beginning prior to January 1, 1994, or (2) \$150,000 for Plan Years beginning on or after January 1, 1994 (subject to adjustment annually as provided in Section 401(a) (17) (B) and Section 415(d) of the Code; provided, however, that the dollar increase in effect on January 1 of any calendar year, if any, is effective for Plan Years beginning in such calendar year). If the compensation of a Participant is determined over a period of time that contains fewer than 12 calendar months, then the annual compensation limitation described above shall be adjusted with respect to the Participant by multiplying the annual compensation limitation in effect for the Plan Year by a fraction the numerator of which is the number of full months in the period and the denominator of which is 12; provided, however, that no proration is required for a Participant who is covered under the Plan for less than one full Plan Year if the formula for allocations is based on Compensation for a period of at least 12 months. In determining the compensation, for purposes of applying the annual compensation limitation described above, of a Participant who is a five-percent owner or one of the ten Highly Compensated Employees receiving the greatest compensation for the Plan Year, the compensation of the Participant's spouse and of his lineal descendants who have not attained age 19 as of the close of the Plan Year shall be included as compensation of the Participant for the Plan Year. If as a result of applying the family aggregation rule described in the preceding sentence the annual compensation limitation would be exceeded, the limitation shall be prorated among the affected family members in proportion to each member's compensation as determined prior to application of the family aggregation rules.
- (b) The "determination date" with respect to any Plan Year means the last day of the preceding Plan Year, except that the determination date with respect to the first Plan Year of the Plan, shall mean the last day of such Plan Year.
- (c) A "key employee" means any Employee or former Employee who is a key employee pursuant to the provisions of Section 416(i) (1) of the Code and any Beneficiary of such Employee or former Employee.
- (d) A "non-key employee" means any Employee who is not a key employee.
- (e) A "permissive aggregation group" means those plans included in each Employer's required aggregation group together with any other plan or plans of the Employer, so long as the entire group of plans would continue to meet the requirements of Sections 401(a) (4) and 410 of the Code.

- (f) A "required aggregation group" means the group of tax-qualified plans maintained by an Employer or a Related Company consisting of each plan in which a key employee participates and each other plan that enables a plan in which a key employee participates to meet the requirements of Section 401(a) (4) or Section 410 of the Code, including any plan that terminated within the five-year period ending on the relevant determination date.
- (g) A "super top-heavy group" with respect to a particular Plan Year means a required or permissive aggregation group that, as of the determination date, would qualify as a top-heavy group under the definition in paragraph (i) of this Section with "90 percent" substituted for "60 percent" each place where "60 percent" appears in the definition.
- (h) A "super top-heavy plan" with respect to a particular Plan Year means a plan that, as of the determination date, would qualify as a top-heavy plan under the definition in paragraph (j) of this Section with "90 percent" substituted for "60 percent" each place where "60 percent" appears in the definition. A plan is also a "super top-heavy plan" if it is part of a super top-heavy group.
- (i) A "top-heavy group" with respect to a particular Plan Year means a required or permissive aggregation group if the sum, as of the determination date, of the present value of the cumulative accrued benefits for key employees under all defined benefit plans included in such group and the aggregate of the account balances of key employees under all defined contribution plans included in such group exceeds 60 percent of a similar sum determined for all employees covered by the plans included in such group.
- (j) A "top-heavy plan" with respect to a particular Plan Year means (i), in the case of a defined contribution plan (including any simplified employee pension plan), a plan for which, as of the determination date, the aggregate of the accounts (within the meaning of Section 416(g) of the Code and the regulations and rulings thereunder) of key employees exceeds 60 percent of the aggregate of the accounts of all participants under the plan, with the accounts valued as of the relevant valuation date and increased for any distribution of an account balance made in the five-year period ending on the determination date, (ii), in the case of a defined benefit plan, a plan for which, as of the determination date, the present value of the cumulative accrued benefits payable under the plan (within the meaning of Section 416(g) of the Code and the regulations and rulings thereunder) to key employees exceeds 60 percent of the present value of the cumulative accrued benefits under the plan for all employees, with the present value of accrued benefits to be determined under the accrual method uniformly used under all plans maintained by an Employer or, if no such method exists, under the slowest accrual method permitted under the fractional accrual rate of Section 411(b) (1) (C) of the accrued benefits distributed in the five-year period ending on the determination date, and (iii) any plan (including any simplified employee pension plan) included in a required aggregation group that is a top-heavy group. For purposes of this paragraph, the accounts and accrued benefits of any employee who has not performed services for an Employer or a Related Company during the five-year period ending on the determination date shall be disregarded. For purposes of this paragraph, the present value of cumulative accrued benefits under a defined benefit plan for purposes of top-heavy determinations shall be calculated using the actuarial assumptions otherwise employed under such plan, except that the same actuarial assumptions shall be used for all plans within a required or permissive aggregation group. A Participant's interest in the Plan attributable to any Rollover Contributions, except Rollover Contributions made from a plan maintained by

an Employer or a Related Company, shall not be considered in determining whether the Plan is top-heavy. Notwithstanding the foregoing, if a plan is included in a required or permissive aggregation group that is not a top-heavy group, such plan shall not be a top-heavy plan.

- (k) The "valuation date" with respect to any determination date means the most recent Valuation Date occurring within the 12-month period ending on the determination date.

## 22.2 Applicability

Notwithstanding any other provision of the Plan to the contrary, the provisions of this Article shall be applicable during any Plan Year in which the Plan is determined to be a top-heavy plan as hereinafter defined. If the Plan is determined to be a top-heavy plan and upon a subsequent determination date is determined no longer to be a top-heavy plan, the vesting provisions of Article VI shall again become applicable as of such subsequent determination date; provided, however, that if the prior vesting provisions do again become applicable, any Employee with three or more years of Vesting Service may elect in accordance with the provisions of Article VI, to continue to have his vested interest in his Employer Contributions Sub-Account determined in accordance with the vesting schedule specified in Section 22.5.

## 22.3 Minimum Employer Contribution

If the Plan is determined to be a top-heavy plan, the Employer Contributions allocated to the Separate Account of each non-key employee who is an Eligible Employee and who is employed by an Employer or a Related Company on the last day of such top-heavy Plan Year shall be no less than the lesser of (i) three percent of his compensation or (ii) the largest percentage of compensation that is allocated as an Employer Contribution and/or Tax-Deferred Contribution for such Plan Year to the Separate Account of any key employee; except that, in the event the Plan is part of a required aggregation group, and the Plan enables a defined benefit plan included in such group to meet the requirements of Section 401(a) (4) or 410 of the Code, the minimum allocation of Employer Contributions to each such non-key employee shall be three percent of the compensation of such non-key employee. Any minimum allocation to a non-key employee required by this Section shall be made without regard to any social security contribution made on behalf of the non-key employee, his number of hours of service, his level of compensation, or whether he declined to make elective or mandatory contributions. Notwithstanding the minimum top-heavy allocation requirements of this Section, if the Plan is a top-heavy plan, each non-key employee who is an Eligible Employee and who is employed by an Employer or a Related Company on the last day of a top-heavy Plan Year and who is also covered under a top-heavy defined benefit plan maintained by an Employer or a Related Company will receive the top-heavy benefits provided under the defined benefit plan in lieu of the minimum top-heavy allocation under the Plan offset by the benefits provided under the Plan.

## 22.4 Adjustments to Section 415 Limitations

If the Plan is determined to be a top-heavy plan and an Employer maintains a defined benefit plan covering some or all of the Employees that are covered by the Plan, the defined benefit plan fraction and the defined contribution plan fraction, described in Article VII, shall be determined as provided in Section 415 of the Code by substituting "1.0" for "1.25" each place where "1.25" appears, except that such substitutions shall not be applied to the Plan if (i) the Plan is not a super top-heavy plan, (ii) the Employer Contribution for such top-heavy Plan Year for each non-key employee who is to receive a minimum top-heavy benefit hereunder is not less than four percent

of such non-key employee's compensation, and (iii) the minimum annual retirement benefit accrued by a non-key employee who participates under one or more defined benefit plans of an Employer or a Related Company for such top-heavy Plan Year is not less than the lesser of three percent times years of service with an Employer or a Related Company or thirty percent.

#### 22.5 Accelerated Vesting

If the Plan is determined to be a top-heavy plan, a Participant's vested interest in his Employer Contributions Sub-Account shall be 100 percent.

ARTICLE XXIII  
EFFECTIVE DATE

23.1 Effective Date of Amendment and Restatement

This amendment and restatement is effective as of January 1, 1996.

EXECUTED AT \_\_\_\_\_, \_\_\_\_\_,  
this \_\_\_\_ day of \_\_\_\_\_.

PROGRESS SOFTWARE CORPORATION

By: /s/ Norman R. Robertson

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Title: Vice President, Finance and  
Administration and Chief  
Financial Officer

FIRST AMENDMENT TO THE  
JANUARY 1, 1996 RESTATEMENT OF THE  
PROGRESS SOFTWARE CORPORATION 401(K) PLAN

This First Amendment to the January 1, 1996 Restatement of the Progress Software Corporation (401(k) Plan (the "Plan") is effective as of September 1, 1997

- 1. The defined terms "Eligible Employee" and "Employee", as set forth in Section 1.1 of the Plan, are hereby deleted and replaced in their entirety by the following new definitions:

An "Employee" means any employee of an Employer other than (i) a leased employee, (ii) an employee who is covered by a collective bargaining agreement that does not specifically provide for coverage under the Plan, or (iii) a non-resident alien who receives no earned income from an employer or related company which constitutes income from sources within the United States.

An "Eligible Employee" means any Regular Employee who has met the eligibility requirements of Article III to have Tax-Deferred Contributions made to the Plan on his behalf.

- 2. The following new definition is inserted at the end of Section 1.1 of the Plan:

A "Regular Employee" means any Employee other than a cooperative student, intern or other employee hired on a temporary basis.

PROGRESS SOFTWARE CORPORATION

By: /s/ Norman R. Robertson

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Norman R. Robertson  
Vice President and Chief Financial Officer



SECOND AMENDMENT TO THE  
JANUARY 1, 1996 RESTATEMENT OF THE  
PROGRESS SOFTWARE CORPORATION 401(K) PLAN

This Second Amendment to the January 1, 1996 Restatement of the Progress Software Corporation 401(k) Plan (the "Plan") is effective as of January 1, 1996.

1. The defined term "Compensation", as set forth in Section 1.1 of the Plan, is hereby deleted and replaced in its entirety by the following new definition:

The "Compensation" of a Participant for any period means the wages as defined in Section 3401 (a) of the Code, determined without regard to any rules that limit compensation included in wages based on the nature or location of the employment or services performed, and excluding reimbursements or other expense allowances, fringe benefits, moving expenses, deferred compensation, and welfare benefits, but determined prior to any exclusions for amounts deferred under Section 125, 402 (e) (3), 402 (h) (1) (B), 403(b) or 457 (b) of the Code or for certain contributions described in Section 414 (h) (2) of the Code that are picked up by the employing unit and treated as employer contributions.

Notwithstanding the foregoing, Compensation shall not include the value of any non-qualified stock option granted to a Participant by his Employer to the extent such value is includible in the participant's taxable income.

PROGRESS SOFTWARE CORPORATION

By: /s/ Norman R. Robertson

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Norman R. Robertson  
Vice President and Chief Financial Officer

THIRD AMENDMENT TO THE  
JANUARY 1, 1996 RESTATEMENT OF THE  
PROGRESS SOFTWARE CORPORATION 401(K) PLAN

This Third Amendment to the January 1, 1996 Restatement of the Progress Software Corporation 401(k) Plan (the "Plan") is effective as of September 1, 1997.

1. The defined term "Eligible Employee", as set forth in Section 1.1 of the Plan, is hereby deleted and replaced in its entirety by the following new definition:

"An `Eligible Employee' means any Regular Employee or Employee who has met the eligibility requirements of Article III to have Tax-Deferred Contributions made to the Plan on his behalf."

2. Section 2.4 of the Plan is hereby deleted and replaced in its entirety by the following:

"There shall be no Eligibility Service required under the Plan for Regular Employees. With respect to an Employee who is not a Regular Employee, a year of Eligibility Service is required. A year of Eligibility Service shall mean a twelve-consecutive month period beginning on his employment commencement date (or his reemployment commencement date) in which he is credited with at least 1,000 Hours of Service."

3. Section 3.1 is hereby amended by deleting the second sentence thereof and substituting therefor the following:

"Each other Employee who is a Regular Employee shall become an Eligible Employee as of the Enrollment date coinciding with or next following the date on which he becomes a Regular Employee. Each other Employee who is not a Regular Employee shall become an Eligible Employee as of the Enrollment Date coinciding with or next following his completion of a year of Eligibility Service."

Executed this \_\_\_\_ day of \_\_\_\_\_, 199\_ by a duly authorized officer of Progress Software Corporation.

PROGRESS SOFTWARE CORPORATION

By: /s/ Norman R. Robertson

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Title: Vice President, Finance and  
Administration and Chief  
Chief Financial Officer

FOURTH AMENDMENT TO THE  
JANUARY 1, 1996 RESTATEMENT OF THE  
PROGRESS SOFTWARE CORPORATION 401(K) PLAN

This Fourth Amendment to the January 1, 1996 Restatement of the Progress Software Corporation 401(k) Plan (the "Plan") is effective as of December 1, 1998.

Section 6.4 of the Plan is hereby amended by deleting the date, January 4, as it appears in the ninth line of such Section and substituting therefor the date, December 31.

Executed this \_\_\_\_ day of December 1998, by a duly authorized officer of Progress Software Corporation.

PROGRESS SOFTWARE CORPORATION

By: /s/ Norman R. Robertson  
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Norman R. Robertson  
Vice President and Chief Financial Officer