

CHURCH OF GOD

Retirement Plan

**(As Amended and Restated
Effective January 1, 2009)**

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**CHURCH OF GOD
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CHURCH OF GOD RETIREMENT PLAN

ARTICLE I Introduction

1.01 Establishment and Restatement of the Plan

The Board of Pensions of the Church of God, Inc. established the Contributory Reserve Pension Plan for the benefit of certain clergy and lay workers of the Church of God effective on or around January 1, 1949. Further, effective October 13, 1978, the Board of Pensions of the Church of God, Inc. established the Church of God Tax Deferred Supplement Plan (“TDS Plan”) for the benefit of certain clergy and layworkers of the Church of God. Effective January 1, 1998, both retirement plans were amended and restated. The TDS Plan was merged into the Contributory Reserve Pension Plan and the resulting plan was named as the “Church of God Pension Plan” (“Plan”).

Effective January 1, 2009, the Board of Pensions amends and restates the Plan as provided herein, and the Plan is renamed the Church of God Retirement Plan. This Plan is intended to be used by eligible Employers to establish a Code section 403(b)(9) retirement income account program. Collectively, each Employer’s plan is comprised of this Plan document, the Schedule, and such other list(s), policies or procedures, or written document(s), which, when properly executed, are hereby incorporated by reference and made a part of the Employer’s Plan as may be necessary or required by law.

1.02 Adoption of Plan

Each eligible Employer shall be permitted to adopt this Plan by executing a Schedule or, subject to the approval of the Board of Pensions, such other written document that evidences the Employer’s intent to participate in the Plan. Each Employer, by adopting this Plan, shall establish a separate Code section 403(b)(9) plan, independent from the plan of any other Employer.

This Plan document reflects the terms and conditions that apply with respect to amounts contributed to the retirement income accounts administered by the Board of Pensions under the Plan. To the extent that an Employer enters into agreements with providers of annuity contracts (as defined in Code section 403(b)(1)) issued by an insurance company qualified to issue annuities in a state, or custodial accounts (as defined in Code section 403(b)(7)) issued by a regulated investment company, or with providers of other retirement income accounts (as defined in Code section 403(b)(9)) that are not administered by the Board of Pensions, the terms of such other agreements shall not alter or apply to the terms of this Plan document or to assets held by the Trustee under this Plan, and will not be taken into account as contracts available under the Plan.

Any amounts contributed to such other providers shall be subject to the terms and conditions of the underlying contracts or agreements the Employer or Member enters into with such other providers.

1.03 Church Plan Status

The Plan is intended to be a “church plan” within the meaning of Section 414(e) of the Code which has not made the election under Section 410(d) of the Code. The Plan is also intended to be a “church plan” within the meaning of section 3(33) of the Employee Retirement Income Security Act of 1974 (“ERISA”). The Plan is therefore not subject to the terms of ERISA. It is intended that the Plan shall be interpreted, wherever possible, to comply with the applicable terms of the Code and all applicable formal regulations and rulings issued under the Code.

Should it come to the attention of the Board of Pensions that any term of the Plan, or its operation, is inconsistent with these Code provisions, the Board of Pensions shall have the power to make such corrections in the form or administration of the Plan as it may deem necessary, in its absolute discretion, to remedy the inconsistencies.

ARTICLE II Definitions

2.01 “Account” shall mean the bookkeeping account or accounts established for the purpose of separately accounting for a Member’s interest in the commingled assets of the Plan. A Member’s Account may include any of the following accounts:

- (a) An Employer Contributions Account which includes the Employer Contributions made on behalf of a Member pursuant to Section 4.02, and any earnings thereon.
- (b) A Before-Tax Contributions Account which includes a Member’s Before-Tax Contributions made pursuant to Section 4.01, and any earnings thereon.
- (c) An After-Tax Contributions Account which includes a Member’s After-Tax Contributions made pursuant to Section 4.03, and any earnings thereon.
- (d) A Foreign Missionary Contributions Account which includes Foreign Missionary Contributions made pursuant to Section 4.04, and any earnings thereon.
- (e) A TDS Plan Account which includes a Member’s December 31, 1997 TDS Plan Account balance, if any, and any earnings thereon.
- (f) A Rollover Contributions Account which includes Rollover Contributions made pursuant to Section 4.05, and any earnings thereon.
- (g) A Transfer Contributions Account which includes Transfer Contributions made pursuant to Section 4.06, and any earnings thereon.

- 2.02** “**After-Tax Contributions**” shall mean the after-tax contributions made by a Member, as provided in Section 4.03.
- 2.03** “**Before-Tax Contributions**” shall mean the shall mean those voluntary salary deferrals made to the Plan at the election of a Member pursuant to a Salary Reduction Agreement, as provided in Section 4.01.
- 2.04** “**Beneficiary**” shall mean the individual(s) or entity(ies), including a trust, charitable organization or estate, designated by a Member to receive the Member’s interest as provided in the Pension Plan in the event of the Member’s death. The Beneficiary of each married Member shall be the Surviving Spouse of such Member, unless such spouse consents in writing to the designation of another Beneficiary or Beneficiaries. The designation of a Beneficiary or Beneficiaries shall not be effective for any purpose unless and until it has been received by the Board of Pensions during the Member’s lifetime on the form provided by the Board of Pensions. A Member may, from time to time, on a form provided by or acceptable to and received by the Board of Pensions, change the Beneficiary or Beneficiaries. In the event a Member does not designate a Beneficiary in the manner heretofore stated, or if for any reason such designation shall be legally ineffective as determined by the Board of Pensions in its sole and complete discretion, or if such Beneficiary predeceases the Member, payments shall be made by the Board of Pensions to the estate of either the Member or Surviving Spouse, whoever is last surviving.
- 2.05** “**Board of Pensions**” or “**Board**” shall mean the Board of Pensions of the Church of God, Inc.
- 2.06** “**Church**” shall mean the Church of God movement, with general offices currently located in Anderson, Indiana.
- 2.07** “**Code**” shall mean the Internal Revenue Code of 1986, as amended.
- 2.08** “**Combined Accumulation**” shall mean the total amount in the Member’s Account. A Member shall at all times be fully vested in the Combined Accumulation.
- 2.09** “**Contributions**” shall mean all contributions to the Plan made on behalf of a Member, including Employer Contributions, Before-Tax Contributions, After-Tax Contributions, Foreign Missionary Contributions, Rollover Contributions and Transfer Contributions.
- 2.10** “**Disability Annuitant**” shall mean a Member receiving a Disability Annuity pursuant to Section 6.02 of this Plan.
- 2.11** “**Disability Annuity**” shall mean the benefits provided under this Plan pursuant to Section 6.02.
- 2.12** “**Employer**” shall mean a Church of God congregation or other agency, organization or institution of the Church paying a Salary to a Member. Subject to the approval of the

Board of Pensions, the term “Employer” shall also include an organization paying a Salary to an ordained or licensed minister of the Church who is serving in the exercise of his or her ministry.

- 2.13 **“Employer Contributions”** shall mean those contributions made by an Employer pursuant to the provisions of Section 4.02.
- 2.14 **“Foreign Missionary”** shall mean a foreign missionary within the meaning of Code section 415(c)(7)(C).
- 2.15 **“Foreign Missionary Contributions”** shall mean the contributions made by an Employer on behalf of a Member who is a Foreign Missionary in accordance with the provisions of Section 4.04.
- 2.16 **“General Assembly”** shall mean the General Assembly of the Church of God.
- 2.17 **“Installment Recipient”** shall mean a Member receiving installment distributions pursuant to Section 6.01(a)(2).
- 2.18 **“Investment Fund”** means any investment fund established by the Board of Pensions as an investment medium for the Plan but only with respect to those amounts contributed to the retirement income accounts administered by the Board of Pensions under the Plan. The Board of Pensions shall have the discretion to establish and terminate such funds as they shall deem appropriate.
- 2.19 **“Joint And Survivor Annuity”** shall mean an annuity payable for the life of a Member, with 50 or 100 percent of such annuity (whichever is elected by the Member in writing on a form provided by the Board of Pensions) continued at the death of a Member for life to the spouse to whom the Member was married when the annuity was entered upon, if such a spouse survives the Member.
- 2.20 **“Joint And Survivor Annuity With Ten Years Certain”** shall mean an annuity payable for the life of a Member, with 50 or 100 percent of such annuity (whichever is elected by the Member in writing on a form provided by the Board of Pensions) continued at the death of a Member for life to the spouse to whom the Member was married when the annuity was entered upon, if such spouse survives the Member, except that, if both the Member and spouse shall die before annuity payments have been made for ten years, payments in the amount of 50 or 100 percent of the Member’s annuity, whichever was elected by the Member, shall continue for the remainder of the ten-year period to the Member’s Beneficiary.
- 2.21 **“Member”** shall mean a person eligible under Article III who has been accepted and is enrolled as a Member in the Plan.

- 2.22 “Non-QCCO”** shall mean a non-qualified church-controlled organization defined in Code section 3121(w)(3)(B), and generally shall refer to any church-controlled, tax-exempt organization described in Code section 501(c)(3), that:
- (a) offers goods, services, or facilities for sale, other than on an incidental basis, to the general public, other than goods, services, or facilities which are sold at a nominal charge which is substantially less than the cost of providing such goods, services, or facilities; and
 - (b) normally receives more than 25% of its support from either (1) governmental sources or (2) receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in activities which are not unrelated trades or businesses, or both.
- 2.23 “Plan”** shall mean the Code section 403(b)(9) retirement income account plan described herein and as from time to time amended. However, as described in Section 1.02, each Employer adopts this Plan as a separate plan, independent from the plan of any other Employer.
- 2.24 “Retirement”** shall mean the Retirement of a Member from active Service in the Church or in the ministry to which any Salary arrangement is attached after attaining the age of 60 years or completing 40 years of Service.
- 2.25 “Retirement Annuitant”** shall mean a Member receiving a retirement annuity pursuant to Section 6.01.
- 2.26 “Rollover Contributions”** shall mean the direct transfer of an eligible rollover distribution to the Plan pursuant to Section 4.05.
- 2.27 “Salary”** shall mean the fixed salary or wages paid by an Employer to a Member, or self-employment income earned in the performance of ministry of a Member, including any contributions to a cafeteria plan under Code section 125. In the case of a Member who is a minister of the gospel, Salary also includes any housing allowance and, to the extent that such Member is also furnished the free use of a residence, Salary also includes an additional 25 percent of the fixed Salary of the Member.
- 2.28 “Salary Reduction Agreement”** shall mean a written, legally binding agreement between an employee and an Employer, which satisfies the requirements of Code section 403(b) and by which the employee agrees to take a reduction in taxable compensation not available as of the date of the election and which is contributed by the Employer as a Before-Tax Contribution to the employee’s Account under the Plan.
- 2.29 “Schedule”** shall mean the Eligibility and Participation Schedule that is adopted by an Employer that participates in this Plan and that sets forth the eligibility, participation and contributions provisions, and any other additional requirements applicable to each

Employer participating in this Plan. The Schedule is incorporated by reference and made part of this Plan.

- 2.30** “**Service**” shall mean a Member’s aggregate elapsed time in completed years and months of employment with any Employer, aggregating all employment with any entity that is included in the definition of Employer under Section 2.12.
- 2.31** “**Single Life Annuity**” shall mean an annuity payable for the life of an individual, with no payments after the death of such individual.
- 2.32** “**Single Life Annuity With Ten Years Certain**” shall mean a Single Life Annuity, except that, if the individual receiving the annuity should die before annuity payments have been made for ten years, payments in the same amount shall continue for the remainder of the ten-year period to the Member’s Beneficiary. If no valid Beneficiary designation exists at the time any payment is due after the death of the individual, payments shall be made by the Board of Pensions to the individual’s estate.
- 2.33** “**Surviving Spouse**” shall mean the Surviving Spouse of a deceased Member who is eligible for a Surviving Spouse annuity pursuant to Section 6.03.
- 2.34** “**TDS Plan**” shall mean The Church of God Tax Deferred Supplement Plan which was merged into this Plan effective January 1, 1998.
- 2.35** “**Transfer Contributions**” shall mean the direct transfer of all or a portion of a Code section 403(b) plan to the Plan pursuant to Section 4.06.
- 2.36** “**Trust**” shall mean the trust established to hold and invest contributions made to the retirement income accounts administered by the Board of Pensions under the Plan, and from which benefits will be distributed.
- 2.37** “**Trustees**” shall mean the corporation, individual or individuals as may be designated by the Board of Pensions to hold the assets in the Trust Fund pursuant to the Trust. The appointment, removal, and terms and conditions of service of the Trustees shall be determined by the Board of Pensions.
- 2.38** “**Trust Fund**” shall mean all assets of whatever kind and nature from time to time held by the Trustees pursuant to the Trust.

Use of Terms. Any words herein used in the masculine shall be read and be construed in the feminine where they would so apply. Words in the singular shall be read and construed as though used in the plural in all cases where they would so apply.

ARTICLE III Membership

Those eligible for membership under the Plan shall be employed or self-employed and receiving Salary as—

- (a) ordained ministers of the Church,
- (b) unordained ministers rendering service to the Church,
- (c) commissioned home or foreign missionaries of the Church,
- (d) lay workers rendering service to the Church, and
- (e) subject to the approval of the Board of Pensions, an ordained or licensed minister of the Church, described in Code section 414(e)(5)(A) who is serving in the exercise of his or her ministry.

Notwithstanding the foregoing, each Employer must indicate in its Schedule the eligibility and participation requirements applicable to its employees or ministers.

An individual eligible to become a Member under this Article III shall become a Member when Contributions are credited to the Plan on his behalf. Once an individual becomes a Member under this Article III, he shall thereafter remain a Member until he has received his entire Combined Accumulation from or final payment under the Plan, provided, however, that the Board of Pensions shall have the authority to amend the Plan to terminate the participation therein of any Members who are not United States citizens and also are not working in the United States.

All Members shall be bound by the terms of the Plan, including all amendments hereto made in the manner authorized herein.

ARTICLE IV Contributions

4.01 Member Before-Tax Contributions

- (a) Subject to the limitations in Article XII, and subject to any eligibility and participation requirements set forth in the Employer's Schedule, a Member may contribute a specified dollar amount or a percentage of such Member's Salary on a tax-deferred basis as a Before-Tax Contribution. All such contributions shall be credited to the Member's Before-Tax Contributions Account pursuant to procedures established by the Board of Pensions from time to time, and shall be fully vested at all times.

- (b) Each Member's Before-Tax Contributions shall be made pursuant to a written Salary Reduction Agreement that—
 - (1) is on a form provided by the Board of Pensions or on such other form that meets the requirements of this Section 4.01(b), and such form is signed by the Member prior to the first pay period for which the agreement is to be effective;
 - (2) provides for a reduction in the Salary paid to the Member by the Employer in exchange for the contribution of a Before-Tax Contribution to the Plan on behalf of the Member;
 - (3) specifies the amount of Before-Tax Contributions;
 - (4) is binding upon the Member with respect to Salary earned while it is in effect;
 - (5) is terminable at any time, with respect to Salary not yet earned, with any termination effected by filing written notice with the Employer; and
 - (6) applies only to Salary that becomes currently available after the written agreement is in effect.
- (c) All Before-Tax Contributions shall be due to the Board of Pensions within fifteen business days following the end of the month in which such amount would otherwise have been paid to the Member or, if later, within a period that is not longer than is reasonable for the proper administration of the Plan.

4.02 Employer Contributions

- (a) Subject to the limitations in Article XII, each Employer served by a minister or lay worker who is eligible to become a Member pursuant to Article III, other than a Foreign Missionary or a self-employed minister, is strongly encouraged to make Employer Contributions in an amount of at least 11 percent of the Salary of each such individual; provided, however, that the Employer shall have the discretion to elect to contribute a different amount. Such Employer Contributions shall be items of current expense and not of benevolence.
- (b) Each Employer shall execute a Schedule which sets forth the amount of Employer Contributions and any eligibility requirements with respect to such contributions, and such Schedule shall be incorporated by reference into the Plan for purposes of that Employer. All such contributions shall be credited to the Employer Contributions Account of the Member and shall be fully vested at all times.
- (c) Subject to the limitations in Article XII, an Employer, in its sole discretion, may elect to make Employer Contributions for a Member who has terminated

employment; provided, however, that no such contributions shall be made after the end of the fifth Plan Year following such Member's termination of employment. Employer Contributions made on behalf of terminated Members will comply with the requirements of Treasury Regulation section 1.403(b)-4(d). All such contributions shall be credited to the Employer Contributions Account of the Member.

- (d) Employer Contributions shall be due to the Board of Pensions within a period that is not longer than is reasonable for the proper administration of the Plan. In the case of any change in Salary during a period for which remittance has been made, adjustment shall, to the extent possible, be made in the succeeding remittance.

4.03 After-Tax Contributions

Subject to the limitations in Article XII and to the extent permitted by the rules and regulations of the Board of Pensions, any Member may make contributions to the Plan on an after-tax basis in accordance with the provisions of the Employer's Schedule. Such contributions shall be allocated, administered, and applied as After-Tax Contributions, and shall be credited to the Member's After-Tax Contributions Account. All After-Tax Contributions shall be fully vested at all times. After-Tax Contributions, if deducted from the Member's Salary, shall be due to the Board of Pensions within fifteen business days following the end of the month in which such amount would otherwise have been paid to the Member or, if later, within a period that is not longer than is reasonable for the proper administration of the Plan.

4.04 Foreign Missionary Contributions

Subject to the limitations in Article XII and to the extent permitted by the rules and regulations of the Board of Pensions, an Employer employing a Foreign Missionary may make Foreign Missionary Contributions, and such contributions shall be credited to the individual Member's Foreign Missionary Account. The amount of such Foreign Missionary Contributions must be set forth in the Employer's Schedule. All Foreign Missionary Contributions shall be fully vested at all times. Foreign Missionary Contributions shall be due to the Board of Pensions within a period that is not longer than is reasonable for the proper administration of the Plan.

4.05 Rollover Contributions

Unless otherwise prohibited by applicable law, a Member may, in accordance with procedures approved by the Board of Pensions, roll over all or part of any distribution from an eligible retirement plan. For purposes of this Section 4.05, an "eligible retirement plan" includes:

- (a) A Code section 403(b)(1) annuity contract, a Code section 403(b)(7) custodial account or a Code section 403(b)(9) retirement income account;
- (b) An individual retirement account or annuity described in Code section 408(a) or 408(b);

- (c) A qualified trust described in Code section 401(a);
- (d) An annuity plan described in Code section 403(a); and
- (e) An eligible deferred compensation plan described in Code section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Such a contribution must be paid over to the Board of Pensions on or before the sixtieth day after receipt by the Member of the distribution, or such later date as may be permitted under the Code, and shall be held under this Plan in the Member's Rollover Contributions Account. Such contributions shall not be subject to the limitations in Article XII. A Member's Rollover Contributions shall be fully vested at all times.

4.06 Transfer Contributions

Subject to the approval of the Board of Pensions, amounts may be transferred to the Plan on behalf of a Member (with respect to amounts attributable to the Member) directly from a Code section 403(b)(1) annuity contract, a Code section 403(b)(7) custodial account or a Code section 403(b)(9) retirement income account. All contributions made pursuant to this Section 4.06, other than automatic transfers described in Section 6.13(a), shall be credited to the Member's Transfer Contributions Account. Automatic transfers made pursuant to Section 6.13(a) will be allocated to the same contributions accounts from which they were transferred. Contributions pursuant to this Section 4.06 shall not be subject to the limitations in Article XII. The balance in a Member's Transfer Contributions Account shall be fully vested at all times.

To effect a Transfer Contribution, the Member shall complete such forms as the Board of Pensions deems necessary to ensure that the applicable conditions of the Code or any other regulatory requirements are satisfied. Any such transfer must be made in accordance with rules and procedures established by the Board of Pensions. The Board of Pensions may require such documentation from the transferring plan as it deems necessary to effectuate the transfer in accordance with Treasury Regulation section 1.403(b)-10(b)(3) and to confirm that the other plan is a plan that satisfies Code section 403(b).

4.07 Protection of Persons Who Serve in a Uniformed Service

Notwithstanding any provision in this Plan to the contrary, the following provisions apply to any employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) and who later resumes employment with the Employer

- (a) **Employer Contributions.** Each employee described in this Section 4.07 shall be eligible to receive Employer Contributions upon resumption of employment with the Employer equal to the amount of Employer Contributions that the employee would have been entitled to receive during that period if the employee's

employment with the Employer had continued (at the same level of Salary) without interruption or leave, reduced by the Employer Contributions, if any, actually made for the employee during the period of the interruption or leave. In addition, to the extent the Employer Contributions are conditioned on the employee making Before-Tax Contributions, if the employee makes up the Before-Tax Contributions as described in Section 4.07(b), the Employer will make up any Employer Contributions.

- (b) **Before-Tax Contributions and/or After-Tax Contributions.** Each employee described in this Section 4.07 may elect to make additional Before-Tax Contributions or After-Tax Contributions upon resumption of employment with the Employer equal to the maximum Before-Tax Contributions or After-Tax Contributions that the employee could have elected during that period if the employee's employment with the Employer had continued (at the same level of Salary) without the interruption or leave, reduced by the Before-Tax Contributions and/or After-Tax Contributions, if any, actually made for the employee during the period of the interruption or leave. Except to the extent provided under Code section 414(u), this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

ARTICLE V

Investment Elections

5.01 Member Investment Elections

Each Member may elect to have any Contributions made on his behalf invested in increments of five percent, or such lesser percentage as may be selected by the Board of Pensions from time to time (totaling 100 percent) in any one or more of the Investment Funds.

5.02 Investment Transfers

With respect to the balance in a Member's Account, each Member may elect as of any month end, or at any other time as may be established by the Board of Pensions, to have the assets in any Investment Fund transferred to any one or more other Investment Fund(s).

5.03 Investment Elections

Each Member may make the elections described in Sections 5.01 or 5.02 above by filing an election form with the Board of Pensions. A Member may change any investment election at any time to be effective as soon as administratively feasible after the end of a month, or at any other time as may be established by the Board of Pensions. In the absence of an election, the Board of Pensions shall invest a Member's Combined Accumulation in the default Investment

Fund, as selected by the Board of Pensions in its sole discretion. The Board of Pensions may authorize alternative methods for making changes in investment elections, including electronic or telephonic communications, to be effective as soon as administratively feasible, in lieu of a written election form. Any such alternative method of making investment elections shall be considered to have been “filed” with the Board of Pensions. Any such alternative investment election method (including all applicable rules, procedures, and limitations) shall be communicated to Members.

5.04 Transfer of Assets

The Board of Pensions shall transfer moneys or other property from the appropriate Investment Funds to the other Investment Funds as may be necessary to carry out the aggregate transfer transactions after the Board of Pensions has caused the necessary entries to be made in the Members’ accounts in the Investment Funds and has reconciled offsetting transfer elections, in accordance with uniform rules therefore established by the Board of Pensions.

5.05 Processing Investment Choices Subject to Rules, Regulations and Procedures

All Contributions to the retirement income accounts administered by the Board of Pensions shall be invested in accordance with the provisions of this Article V. The processing of investment choices shall be subject to any rules, regulations or procedures which the Board of Pensions, in its sole discretion, considers necessary or convenient for the efficient administration of the Plan. The Board of Pensions may authorize alternative methods for making changes in investment elections, including electronic or telephonic communications. The availability of any such alternative investment election method (including all applicable rules, procedures, and limitations applicable thereto) shall be communicated to Members.

ARTICLE VI Distributions and Withdrawals

The provisions of this Article VI shall apply only with respect to distributions of Contributions made under the Plan to the retirement income accounts administered by the Board of Pensions under the Plan.

6.01 Retirement Distributions

- (a) Upon the Retirement of a Member (or after attainment of age 60 for a Member whose Service ceased prior to attaining age 60), or the completion of 40 years of Service to the Church, the Combined Accumulation of the Member may be:
 - (1) applied as the actuarial equivalent, according to the table of rates adopted by the Board of Pensions for such purpose and then in force, to provide a retirement annuity for the Member or, at the election of the Board of

Pensions, used to purchase a retirement annuity from a commercial insurance company;

- (2) distributed in the form of a series of installment payments under rules adopted by the Board of Pensions;
- (3) received as a single lump sum distribution; or
- (4) received as partial lump sum distributions.

Except as provided in Section 6.01(b) below, the Member, if married, shall elect either a Joint and Survivor Annuity or a Joint and Survivor Annuity With Ten Years Certain.

- (b) In lieu of a retirement annuity for a married Member in the form of a Joint And Survivor Annuity or a Joint And Survivor Annuity With Ten Years Certain, the Member, with the written consent of the Member's spouse, may elect to have provided for the Member alone a retirement annuity in the form of a Single Life Annuity or a Single Life Annuity With Ten Years Certain, installment payments, a single lump sum distribution, or partial lump sum distributions, as described in paragraph (a) above.
- (c) In the event that, at the time the Member becomes eligible to receive a retirement annuity, the Member has no spouse, and elects not to take a retirement annuity in the form of a Single Life Annuity or a Single Life Annuity With Ten Years Certain, installment payments, or a single lump sum distribution, the Member may elect to take a Joint And Survivor Annuity or a Joint And Survivor Annuity With Ten Years Certain, subject to the rules and regulations of the Board of Pensions, and may select another Beneficiary, related to the Member by blood or marriage, to receive the survivor annuity.
- (d) In the event a retired Member resumes active Service in the Church or in the ministry, any retirement annuity or installment payments being made to the Member at that time shall continue in accordance with the provisions of Section 6.01(a). The Member and the Employer of the Member shall assume the same status with respect to any additional Contributions and in all other respects as in the case of an active Member before Retirement. Any additional Combined Accumulation attributable to such resumption of active Service may be received under any form of payment permitted under Section 6.01(a), (b) or (c) above.
- (e) Any option provided in this Section 6.01 must be elected before the retirement annuity or installment payments begin or the single lump sum distribution is made, and there can be no change in the form of payment after such payments begin or such distribution is made; provided, however that a Member may request a change in installment payments with respect to either the amount or frequency of such payments. Any change in the amount or frequency of installment

payments shall be subject to the sole discretion of the Board of Pensions. For purposes of this subsection (e), payments are considered to have begun and a distribution is considered to have been made when the Member cashes the first payment or distribution check or receives an electronic funds transfer associated with the payment.

6.02 Disability Annuity

- (a) In the event of the total and presumably permanent disability of a Member, as defined in Section 6.02(b) below, before attaining the age of 60 years, at the Member's option, the Combined Accumulation of the Member shall be applied as the actuarial equivalent, according to the table of rates adopted by the Board of Pensions for such purposes and then in force, to provide a disability annuity for the Member beginning the month following the proof of disability or, at the election of the Board, used to purchase a retirement annuity from a commercial insurance company. The Member, if married, shall elect either a Joint And Survivor Annuity or a Joint And Survivor Annuity With Ten Years Certain. In the event that, at the time the Member becomes eligible to receive a disability annuity, the Member either has no spouse or receives the written consent of his/her spouse, the Member may elect to take a Single Life Annuity or a Single Life Annuity With Ten Years Certain, under terms similar to those provided for the retirement annuity in Section 6.01(b).
- (b) A Member shall be considered to suffer from a total and presumably permanent disability if the Member is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. Proof of disability must be made upon the forms and in the manner provided by the Board of Pensions and shall include certification of a competent physician as to such disability. The Board of Pensions shall have the right to require proof of continued disability and certification as to earnings and occupation, if any, from time to time but at intervals of not less than a period of one year.
- (c) If the Disability Annuitant should recover prior to attaining age 60 because such disability proved to be temporary rather than permanent, the Disability Annuity shall terminate as of the date the Member resumes a gainful occupation, and, until the Member's subsequent death, disability or Retirement, the Member and the Employer of the Member shall assume the same status with respect to any additional Contributions and in all other respects as in the case of an active Member before disability retirement. In such event, the proper actuarial adjustment shall be made in the annuities and benefits subsequently due such Member and the Member's designated Beneficiaries because of the suspension of annuity payments and of the Contributions made during the period subsequent to the disability retirement of the Member.

- (d) If the Disability Annuitant should recover after attaining age 60 because such disability proved to be temporary rather than permanent, the Disability Annuity shall continue until the Member's subsequent death. In the event of resumption of active Service, the Disability Annuitant and the Employer of the Disability Annuitant shall assume the same status with respect to any additional Contributions and in all other respects as in the case of an active Member before Retirement. In the event of such resumption of active Service, any additional Combined Accumulation may be received under any form of payment permitted under Section 6.02(a) above.
- (e) The disabled Member shall be entitled to options corresponding to those available to a Member retiring on account of age or length of service, as provided in Sections 6.01(a), (b) and (c).

6.03 Surviving Spouse Benefits

- (a) In the event of the death of a Member who is a Retirement Annuitant, a Disability Annuitant, or an Installment Recipient, leaving a Surviving Spouse, the Surviving Spouse shall receive the Surviving Spouse's portion of the annuity payment, if any, or the balance of any installment payments, as provided in Sections 6.01 and 6.02.
- (b) In the event a Member dies before becoming eligible for a retirement annuity under Section 6.01 or a Disability Annuity under Section 6.02, or before receiving a single lump sum distribution or the Member's entire Combined Accumulation in the form of installments, the Member's remaining Combined Accumulation shall be applied as the actuarial equivalent, according to the table of rates adopted by the Board of Pensions for such purpose and then in force, to provide the Surviving Spouse, if any, with a Single Life Annuity or a Single Life Annuity With Ten Years Certain, or may be applied as installment payments, a single lump sum distribution or partial lump sum distributions (including withdrawals of all or part of the Member's After-Tax Contributions Account pursuant to Section 6.09, as elected by the Surviving Spouse. In such event, the Surviving Spouse may defer commencement of the payment until April 1 of the year following the year the Member would have attained age 70½.
- (c) A Member may, with the written consent of his spouse, designate a Beneficiary other than the spouse to receive any distributions that may be payable to the Member under the Plan following the death of such Member. If the prescribed forms are submitted to the Board of Pensions, any benefits otherwise payable to the Surviving Spouse under Sections 6.03(a) and (b) above shall be made to the designated Beneficiary in a lump sum form of payment. Notwithstanding the foregoing, any Beneficiary designation made pursuant to this Section 6.03(c) shall

not affect the rights of a Surviving Spouse under any joint life form of annuity payment.

6.04 Payment of Benefits

All payments of benefits by the Plan made pursuant to Sections 6.01 and 6.02, except for single or partial lump sum distributions, shall be made in monthly installments. The Board of Pensions shall have the power, at the written request of the Beneficiary, to make a commuted value single lump sum distribution for the Ten Year Certain component of either a Joint and Survivor Annuity With Ten Years Certain or a Single Life Annuity With Ten Years Certain.

Notwithstanding any other provision of this Plan, the Board of Pensions may, in its sole discretion, require payment in a lump sum of the value of the Combined Accumulation of any Member who separates from Service with the Church if the balance of the Combined Accumulation, as of the date of the Member's separation from Service or at the time of payment, if later, is less than \$5,000.00, or such other amount as may be determined by the Board of Pensions, in its discretion. In the event the Member's Combined Accumulation (taking into account the Member's Contributions to all Vendors) exceeds \$1,000.00, if the Member does not elect to have such distribution paid directly to the Member or to an eligible retirement plan specified by the Member in a direct rollover or to receive the distribution directly, then the Board of Pensions will pay the distribution in a direct rollover to an individual retirement plan designated by the Board of Pensions. Such payment will extinguish all rights of the Member to benefits under this Plan.

6.05 Lump Sum Death Benefit

In the event a Member dies before becoming eligible for a retirement annuity under Section 6.01 or a Disability Annuity under Section 6.02, or before receiving a single lump sum distribution or the Member's entire Combined Accumulation in the form of installments under Section 6.01, and leaving no Surviving Spouse or leaving a Surviving Spouse who does not survive long enough to receive a payment under Section 6.03 above, the Member's Combined Accumulation shall be paid in a single lump sum distribution to the Member's Beneficiary.

6.06 Hardship Withdrawals

- (a) **Immediate and Heavy Financial Need.** A Member who has not yet begun to receive benefits under Section 6.01 or 6.02 above may make a hardship withdrawal first, of all or a portion of the Member's After-Tax Contributions Account, if any, and then up to 50 percent of the amount remaining in the Member's Combined Accumulation (excluding any interest credits or earnings attributable to any Contributions) or, if greater, the Member's entire December 31, 1997 TDS Plan account balance (excluding any interest credits or earnings added to the TDS Plan balance after December 31, 1988) in the event of an immediate and heavy financial need arising from –

- (1) uninsured medical expenses described in Code section 213 and Treasury Regulation § 1.213-1 (as in effect for the year of withdrawal) incurred by the Member, the Member's spouse or any of the Member's dependents (as defined in Code section 152);
- (2) costs directly related to the purchase of a principal residence of the Member (excluding mortgage payments);
- (3) the payment of tuition and related education fees for the next 12 months of post-secondary education for the Member, or the Member's spouse, children or dependents (as defined in Code section 152, without regard to Code sections 152(b)(1), (b)(2) and (d)(1)(B));
- (4) payments necessary to prevent the eviction of the Member from the Member's principal residence or foreclosure on the mortgage on that residence;
- (5) payments for burial or funeral expenses for the Member's deceased parent, spouse, children or dependents (as defined in Code section 152, without regard to Code section 152(d)(1)(B)); or
- (6) expenses for the repair of damage to the Member's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10 percent of adjusted gross income).

The Board of Pensions shall have the discretion to amend the Pension Plan to permit a Member to obtain hardship withdrawals in amounts in excess of 50 percent of his Combined Accumulation (excluding any interest credits or earnings attributable to the Member's Before-Tax Contributions or added to his TDS Plan balance after December 31, 1988).

In determining the existence of an immediate and heavy financial need, rules similar to the provisions of Treasury Regulation section 1.401(k)-1(d)(3)(iii)(B) shall govern.

- (b) **Distribution of Amount Necessary to Meet Need.** As soon as practicable after—
- (1) the Board of Pension's determination that an immediate and heavy financial need exists with respect to the Member; and
 - (2) all other distributions and nontaxable loans currently available to the Member under this Plan, if any, or any other plans maintained by the Member's Employer have been made;

the Board of Pensions will pay to the Member the amount requested by the Member that is necessary to meet the need created by the hardship (but not in excess of the amount permitted under Section 6.06(a) above). The amount necessary to meet the need may include the amount of any federal, state or local income taxes or penalties reasonably anticipated to result from the withdrawal. The Member shall be responsible for any excise taxes and/or any income taxes due on a hardship distribution under this Section 6.06. All hardship distributions shall be made in the form of a single lump sum payment.

- (c) **Effect of Hardship Distribution.** A Member who receives a financial hardship distribution under this Section 6.06, shall be prohibited from making any salary-reduced or after-tax contributions to this Plan, and all other plans maintained by his employer (including all qualified and nonqualified deferred compensation plans maintained by such employer, but not including health or welfare benefit plans or the mandatory employer contribution portion of any defined benefit plan) for a period of six (6) months after receipt of the withdrawal.
- (d) **Exchange of Information.** To the extent that the Employer enters into agreements with providers of annuity contracts (as defined in Code section 403(b)(1)), or custodial accounts (as defined in Code section 403(b)(7)), or with providers of other retirement income accounts (as defined in Code section 403(b)(9)) that are not administered by the Board of Pensions, the Employer shall be responsible for ensuring that the terms of other such agreements provide for the exchange of information among the Employer, the Board of Pensions and such other providers to the extent necessary to comply with the requirements of the Code and applicable Treasury Regulations. Such exchange of information shall include, in the event of a hardship withdrawal, under this Section 6.06, the provider notifying the Employer of the withdrawal in order for the Employer to implement the resulting six-month suspension of the Member's right to make Before-Tax and/or After-Tax Contributions under the Plan.

6.07 Age 60 and 40-Year Service Withdrawals

A Member who has not yet begun to receive benefits under Section 6.01 or 6.02 above may make a withdrawal from his Combined Accumulation in the Plan on and after the date of attaining age 60 or completion of 40 years of Service. As soon as practicable after the Age 60 or 40-year Service Withdrawal request, the Board of Pensions will pay to the Member the amount of the requested withdrawal. Age 60 and 40-Year Service Withdrawals shall be made pursuant to such rules as the Board prescribes, and such rules may include restrictions on the number of withdrawals per year and the amount of the Combined Accumulation that may be withdrawn in any given year. In the case of a married Member, an Age 60 and 40-Year Service Withdrawal may be made only with the written consent of the Member's spouse, provided that such spouse can be located. Notwithstanding the foregoing, in no event shall a Member be entitled to withdraw any amounts attributable to Member Before-Tax Contributions unless the Member has

attained age 59½, had a severance from employment, died or become disabled within the meaning of Code section 72(m)(7), or in the case of hardship, as provided under Section 6.06.

6.08 Distributions of Rollover Contributions Account

Upon application and after receipt of a written spousal consent by the Board of Pensions, the Member may elect at any time to be paid part or all of the Member's Rollover Contributions Account, if any. The Combined Accumulation of the Member remaining in the Plan after any withdrawal from the Member's Rollover Contributions Account shall remain fully vested in the Member, shall be adjusted to reflect any earnings or losses under the Plan, and shall ultimately be applied towards providing a benefit as provided in this Article VI.

6.09 Withdrawal from After-Tax Contributions Account

Any Member who terminates active Service before receiving a distribution under Section 6.01 or 6.02, may make no further Before-Tax Contributions or After-Tax Contributions to the Plan. In such event, upon application and after receipt of a written spousal consent by the Board of Pensions, the Member may elect to be paid part or all of the Member's After-Tax Contributions Account. All distributions from the Member's After-Tax Contributions Account shall be made in the form of a lump sum payment. The Combined Accumulation of the Member remaining in the Plan after any withdrawal from the Member's After-Tax Contributions Account shall remain fully vested in the Member, shall be adjusted to reflect any earnings or losses under the Plan, and shall ultimately be applied towards providing a benefit as provided in Article VI.

In the event that such Member was receiving a Disability Annuity which has terminated because of the recovery of the Member, any such Disability Annuity payments attributable to Member After-Tax Contributions shall reduce, to the extent of such payments, the withdrawal benefit of the Member under this Section 6.09.

6.10 Withdrawal of TDS Plan Accounts

Notwithstanding any provision herein to the contrary, any Member who had an account balance under the TDS Plan as of December 31, 1997 shall continue, solely with respect to such balance, to be able to enjoy the following rights not otherwise available elsewhere in this Plan: to withdraw the Member's entire December 31, 1988 TDS Plan account balance at any time, whether or not such Member has had a separation from service with his Employer. Such distribution shall be in the form of a single lump sum distribution, equal installments for a specific period of time, or any other form of payment provided elsewhere in this Plan, subject to the approval of the Board of Pensions, in its sole discretion.

6.11 In-Service Withdrawals Prior To Separation From Service

Except otherwise as provided in Article VI, no in-service withdrawals are permitted with respect to assets held in the retirement income accounts administered by the Board of Pensions under this Plan.

6.12 Eligible Rollover Distributions

(a) **General.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Board of Pensions, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover, provided that the Eligible Rollover Distribution is not less than \$200.

(b) **Definitions.**

(1) Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any 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 Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code section 401(a)(9); any distribution which is made upon the hardship of the Member; and any other distribution which is not an Eligible Rollover Distribution under applicable law.

The maximum amount which may be transferred in an eligible rollover distribution shall not exceed the maximum amount as defined in Code section 402(c)(2). Notwithstanding the provisions of Section 6.12(b)(2) below, after-tax employee contributions may only be transferred: (i) in a direct rollover to a qualified trust described in Code section 401(a) or an annuity plan described in Code section 403(b), which agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (ii) to an individual retirement account or annuity described in Code section 408(a) or 408(b).

(2) Eligible Retirement Plan. An Eligible Retirement Plan is any one of the following that accepts the Distributee's Eligible Rollover Distribution: an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity contract described in Code section 403(b) (including custodial accounts described in Code section 403(b)(7) and retirement income accounts described in Code section 403(b)(9)), a qualified trust described in Code section 401(a), an annuity plan described in Code section 403(a), an

eligible deferred compensation plan described in Code section 457(b) which is maintained by an eligible employer described in Code section 457(e)(1)(A), or any other plan or arrangement determined to be, under applicable law, an Eligible Retirement Plan with respect to a distribution from a retirement income account described in Code section 403(b)(9).

- (3) **Distributee.** A Distributee includes a Member. In addition, the Member's Surviving Spouse and the Member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p), are Distributees with regard to the interest of the spouse or former spouse.
- (4) **Direct Rollover.** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.
- (c) **Nonspouse Election.** A nonspouse Beneficiary may elect, at the time and in the manner the Board of Pensions prescribes, to have his death benefit distribution from the Plan paid in a Direct Rollover to an individual retirement account that has been established on behalf of the nonspouse Beneficiary as an inherited IRA within the meaning of Code section 408(d)(3)(C).
- (d) **Notice.** The Board of Pensions shall be responsible for providing, within a reasonable time period before making an initial Eligible Rollover Distribution, an explanation to the Member of his right to elect a Direct Rollover and the income tax withholding consequences of not electing a Direct Rollover.

6.13 Transfers Out of Plan

- (a) **Automatic Transfer.** A Member who terminates or has terminated employment with an Employer and who is subsequently employed by another Employer that has adopted this Plan shall have his entire Account, if any, automatically transferred to the new Employer's Plan immediately upon commencement of employment with such other Employer. Any such transfer shall comply with the requirements of Treasury Regulation section 1.403(b)-10(b)(3).
- (b) **No Other Transfers Permitted.** Except as permitted under Section 6.12 and Section 6.13(a), the Plan does not permit transfers of any portion of a Member's Account held by the Trustees to be transferred to another plan described in Code section 403(b) or any other retirement plan.

6.14 Loans

No loans shall be made from any assets held in the retirement income accounts administered by the Board of Pensions under the Plan.

ARTICLE VII
Minimum Distribution Rules

7.01 Minimum Required Distributions

Notwithstanding any other provisions to the contrary, all distributions under this Plan will be made in accordance with the requirements of Code section 401(a)(9) and the Treasury Regulations thereunder. The provisions of this Article VII shall override any distribution options in the Plan inconsistent with the requirements of Code section 401(a)(9).

- (a) **Required Beginning Date.** To the extent required by the Code, a Member's Combined Accumulation shall become payable beginning no later than the earlier of the required beginning date specified in Code sections 403(b)(10) and 401(a)(9) (which, in general, is April 1 following the later of the calendar year in which the Member retires or attains age 70½).

- (b) **Death of Member Before Distributions Begin.** If the Member dies before distributions begin, the Member's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (1) If the Member's Surviving Spouse is the Member's sole Designated Beneficiary, distributions to the Surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, or by December 31 of the calendar year in which the Member would have attained age 70½, if later.
 - (2) If the Member's Surviving Spouse is not the Member's sole Designated Beneficiary, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Member died.
 - (3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Member's death, the Member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death.
 - (4) If the Member's Surviving Spouse is the Member's sole Designated Beneficiary and the Surviving Spouse dies after the Member but before distributions to the Surviving Spouse begin, Section 7.01(b), other than Section 7.01(b)(1) will apply as if the Surviving Spouse were the Member.
 - (5) For purposes of Section 7.01(b) and for purposes Section 7.01(d), unless Section 7.01(b)(4) applies, distributions are considered to begin on the Member's Required Beginning Date. If Section 7.01(b)(4) applies,

distributions are considered to begin on the date distributions are required to begin to the Surviving Spouse under Section 7.01(b)(1).

(c) **Required Minimum Distributions During Member's Lifetime.**

(1) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Member's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

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

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

(2) Lifetime Required Minimum Distributions Continue Through Year of Member's Death. Required minimum distributions will be determined under this Section 7.01(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Member's date of death.

(d) **Required Minimum Distributions After Member's Death.**

(1) Death On or After Date Distributions Begin.

(A) Member Survived By Designated Beneficiary. If the Member dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Member's death is the quotient obtained by dividing the Member's Account balance by the longer of the remaining life expectancy of the Member or the remaining life expectancy of the Member's Designated Beneficiary, determined as follows:

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

- (ii) If the Member's Surviving Spouse is the Member's sole Designated Beneficiary, the remaining life expectancy of the Surviving Spouse is calculated for each distribution calendar year after the year of the Member's death using the Surviving Spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the Surviving Spouse's death, the remaining life expectancy of the Surviving Spouse is calculated using the age of the Surviving Spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 - (iii) If the Member's Surviving Spouse is not the Member's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the Designated Beneficiary in the year following the year of the Member's death, reduced by one for each subsequent year.
 - (B) No Designated Beneficiary. If the Member dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Member's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Member's death is the quotient obtained by dividing the Member's Account balance by the Member's remaining life expectancy calculated using the age of the Member in the year of death, reduced by one for each subsequent year.
- (2) Death Before Date Distributions Begin.
 - (A) Member Survived by Designated Beneficiary. If the Member dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Member's death is the quotient obtained by dividing the Member's Account balance by the remaining life expectancy of the Member's Designated Beneficiary, determined as provided in Section 7.01(d)(1).
 - (B) No Designated Beneficiary. If the Member dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Member's death, distributions of the Member's entire interest will be

completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

- (C) Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin. If the Member dies before the date distributions begin, the Member's Surviving Spouse is the Member's sole Designated Beneficiary, and the Surviving Spouse dies before distributions are required to begin to the Surviving Spouse as provided under Section 7.01(b)(1), this section 7.01(d) will apply as if the Surviving Spouse were the Member.

(e) **Definitions.**

- (1) Designated Beneficiary. The individual who is designated as the Beneficiary under Section 2.04 of the Plan and is the Designated Beneficiary under Code section 401(a)(9) and Treasury Regulation section 1.401(a)(9)-4.
- (2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 7.01(a). The required minimum distribution for the Member's first distribution calendar year will be made on or before the Member's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Member's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.
- (3) Life expectancy. Life expectancy as computed by use of the Single Life Table in Treasury Regulations section 1.401(a)(9)-9.
- (4) Member's Account balance. The value of the Member's Account as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

- (5) Required Beginning Date. The date specified in Section 7.01(a).

ARTICLE VIII Contingent Fund

8.01 Contingent Fund

The Board of Pensions shall maintain a Contingent Fund which shall consist of—

- (a) any unrealized gains and losses and the net realized gains or losses on the sale or maturity of securities or any other investments (exclusive of any realized or unrealized gains and losses attributable to Member-directed investment of contributions under Article V);
- (b) such portions of the investments or income from investments (exclusive of any realized or unrealized gains and losses attributable to Member-directed investment of contributions under Article V) as may be set aside by the Board of Pensions as a reserve for future contingencies; and
- (c) such sums from other sources as may be allocated by the Board of Pensions to this fund.

This fund shall be available for appropriations authorized by the Board of Pensions for designated purposes.

8.02 Supplemental Transition Payments

For Plan Years beginning before 2005, the Board of Pensions allocated a portion of the Contingent Fund to the individual Accounts of those Members who elected to have all or a portion of their Accounts invested in the Capital Preservation Fund, pursuant to the investment election provisions of Article V, to supplement the investment returns in that Investment Fund in an amount to be determined by the Board of Pensions in its sole discretion. Such supplemental allocations will be made only to those Members who make the election described in this Section 8.02 prior to January 1, 2005. Effective January 1, 2005, the Board of Pensions discontinued such supplemental allocations; the Capital Preservation Fund is no longer offered as an Investment Fund.

ARTICLE IX
Operation of the Plan

9.01 Administration

The following provisions shall apply only with respect to Contributions made to the retirement income accounts administered by the Board of Pensions under the Plan.

- (a) Except as provided in Section 13.03(a), the Plan shall be operated and administered by the Board of Pensions in accordance with such rules and regulations in harmony therewith as said Board of Pensions shall from time to time adopt. The Board of Pensions shall be a fiduciary under the laws of the State of Indiana with respect to its operation and administration of the Plan.

- (b) If any written claim for benefits under the Plan is wholly or partially denied, at the discretion of the Board of Pensions, the claimant shall be given notice in writing within a reasonable period of time after receipt of the claim by the Pension Plan (not to exceed 90 days after receipt of the claim or, if special circumstances require an extension of time, written notice of the extension shall be furnished to the claimant, not to exceed an additional 90 days) by first class mail of such denial, written in a manner calculated to be understood by the claimant, setting forth the following information:
 - (1) the specific reasons for such denial;
 - (2) specific references to pertinent Plan provisions on which the denial is based;
 - (3) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
 - (4) an explanation of the Plan's claim review procedure.

The claimant also shall be advised that the claimant or the claimant's duly authorized representative may request a review by the Board of Pensions of the decision denying the claim by filing with the Board of Pensions, within 60 days after such notice has been received by the claimant, a written request for such review, and that the claimant may review pertinent documents, and submit issues and comments in writing within the same 60-day period. If such request is so filed, such review shall be made by the Board of Pensions within 60 days after receipt of such request, unless special circumstances require an extension of time for processing, in which case the claimant shall be so notified and a decision shall be rendered as soon as possible, but not later than 120 days after receipt of the request for review. The claimant shall be given written notice of the decision

resulting from such review, which notice shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent Plan provisions on which the decision is based. The Board of Pensions' construction and interpretation of any provision of the Plan or of such rules and regulations shall be binding and final on all parties.

- (c) The Board of Pensions may delegate its duties and powers with respect to the administration of the Plan to its committees, officers, and agents. The action or decision of any such committee, officer, or agent, within the scope of the duties and powers so delegated, shall be deemed the action or decision of the Board of Pensions but shall be subject to review by the Board of Pensions in disputed cases. The Board of Pensions' decision upon such review shall be final. The Board of Pensions may employ such counsel, auditors, and other specialists and such clerical, actuarial and other services as it may require in carrying out the provisions of this Plan.
- (d) No more frequently than every five years, the Board of Pensions may readjust annuities or other benefits being paid or to be paid where such changes are deemed to be necessary to protect and preserve the actuarial and financial solvency of the Plan on the basis of the experience as to mortality, disability, retirement, the security of the principal of the invested funds and the rate of earnings thereon.
- (e) The Board of Pensions shall have such other duties and powers as may be necessary to discharge its duties hereunder, including, but not by way of limitation, the following:
 - (1) to construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any benefits hereunder;
 - (2) to prescribe procedures to be followed by Members or Beneficiaries filing applications for benefits;
 - (3) to prepare and distribute, in such manner as the Board of Pensions determines to be appropriate, information explaining the Plan;
 - (4) to receive from the Employers and from Members such information as shall be necessary for the proper administration of the Plan;
 - (5) to furnish the Member or the Employer, upon request, such annual reports with respect to the administration of the Plan as are reasonable and appropriate; and

- (6) to exchange information with Employers to the extent necessary to administer the Plan and comply with the requirements of Code section 403(b) and the applicable regulations.

9.02 Rules and Decisions

The Board of Pensions may adopt such rules as it deems necessary, desirable, or appropriate in administering the Plan. When making a determination or calculation, the Board of Pensions shall be entitled to rely upon information furnished by an Employer, Member or Beneficiary, to the extent permitted by applicable law.

9.03 Application and Forms for Distributions

The Board of Pensions may require a Member or Beneficiary to complete and file with the Board of Pensions an application for distributions and all other forms approved by the Board of Pensions and to furnish all pertinent information requested by the Board of Pensions. The Board of Pensions may rely upon all such information so furnished it, including the Member's or Beneficiary's current mailing address.

9.04 Liability

The funds and assets of the Pension Plan shall be and become liable to Members and Beneficiaries hereunder for the payment and discharge of their annuity and benefit claims in the manner and to the extent provided above, but in no event shall any liability accrue against the Church, or the Board of Pensions for annuities, benefits, or other claims arising out of the establishment, maintenance, conduct, and operation of the Pension Plan, nor shall the funds and assets of the Church, or of its boards or agencies (including the Board of Pensions), other than the funds and assets of the Pension Plan, become subject to, or liable for, any such claim or other liability. No action shall ever be maintainable in any court of law or equity against the Church or the Board of Pensions to enforce such asserted claim or liability.

9.05 Benefits May Not Be Assigned

The interests of persons entitled to benefits under the Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, or directly or indirectly (except as may be provided pursuant to a qualified domestic relations order regarding alimony or other payments for the support of a spouse, former spouse, or other relative of a Member, to the extent permitted under Code section 414(p)) prior to actually being received by the person entitled to the benefits under the terms of the Plan. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder shall be void.

The Board of Pensions shall establish procedures to determine whether domestic relations orders are "qualified domestic relations orders" as defined in Code section 414(p) and to administer

distributions under such qualified domestic relations orders. In no event shall a domestic relations order be treated as a qualified domestic relations order if it requires the Pension Plan to make payments for any of the Member's contribution sub-accounts prior to the date that a Member would otherwise be entitled to receive a distribution from such sub-account.

9.06 Construction

The Plan and rules and regulations adopted hereafter, and the rights of Members, Beneficiaries and annuitants of the Plan, shall be construed in accordance with the laws of the State of Indiana. If any provision of the Plan shall be held invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective.

9.07 Withholding Taxes

An Employer shall withhold from a Member's Salary and the Board of Pensions shall withhold from any payment under this Plan any taxes required to be withheld with respect to contributions or benefits under this Plan and may withhold such sum as the Employer or Board of Pensions may reasonably estimate as necessary to cover any taxes for which the Member may be liable and which may be assessed with respect to contributions or benefits under this Pension Plan. A payee shall provide such information as the Board of Pensions may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

9.08 Payments to Minors and Incompetents

If a Member or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Board of Pensions, benefits will be paid to such person as the Board of Pensions may designate for the benefit of such Member or Beneficiary. Such payments shall be considered a payment to such Member or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payment under the Plan.

9.09 Fees and Expenses

All expenses and fees incurred in the administration of the retirement income accounts administered by the Board of Pensions under the Plan and the operation of the Board of Pensions shall be paid for from Members' Accounts, the Contingent Fund, and the annuity reserves. Such expenses shall also include any expenses incident to the general administration of the Plan and the operation of the Board of Pensions, including fees of accountants, counsel, and other specialists. The Board of Pensions shall have complete discretion to allocate expenses of administration to individual Member Accounts on any basis established by the Board of Pensions and uniformly applied to all Accounts.

9.10 Minister's Housing Allowance Paid in Retirement

Any retirement distribution made to a qualified minister of the gospel from assets held by the Board of Pensions under this Plan shall be eligible to be designated as minister's housing allowance only in accordance with the requirements of Code section 107 and Revenue Ruling 75-22 and other applicable regulations and rulings.

9.11 Indemnity for Liability

The Board of Pensions shall indemnify each of its trustees against any and all claims, losses, damages, and expenses, including counsel fees, incurred by the trustee as a result of performing any responsibilities, obligations, or duties in connection with the Plan or activities actually performed in connection with the Pension Plan, along with any liability, including any amounts paid in settlement with the Board of Pensions' approval, arising from the trustee's or Board of Pensions' action or failure to act to the fullest extent permitted by Indiana law.

9.12 Notice of Address and Missing Persons

Each person entitled to benefits under the Plan must file with the Board of Pensions, in writing, such person's post office address and each change of post office address. Any check or electronic payment representing any payment due hereunder, and any communication, statement, or notice addressed to such a person at the latest reported post office address shall constitute adequate payment to such person and will be binding upon such person for all purposes of the Pension Plan. Neither the Board of Pensions, the Church, the Employers, nor any insurance company shall be obliged to search for or ascertain such person's whereabouts. In the event that such person cannot be located, and subject to the requirements of Indiana law, the Board of Pensions may direct that such benefit and all further benefits with respect to such person shall be discontinued, all liability for the payment thereof shall terminate and the balance in such Member's Combined Accumulation shall be deemed a forfeiture; provided, however, that in the event of the subsequent location of the Member or beneficiary prior to termination of the Pension Plan, the benefits which were due and payable and which such person has not received shall be paid in a single lump sum (without any interim earnings) and the future benefits (if any) due such person shall be reinstated in full.

9.13 Mistaken Contributions

The Employer contributes to this Plan on the condition that such Contributions are not made due to a good faith mistake of fact. Except as otherwise provided in a Vendor Contract or in the Trust, if a Contribution is made to the Plan by a good faith mistake of fact, the Board of Pensions, upon request from the Employer, will return to the Employer the amount of the Contributions along with any earnings (or losses) thereon. The Board of Pensions may require the Employer to furnish whatever evidence the Board of Pensions deems necessary to enable the Board of Pensions to confirm that the amount the Employer has requested to be returned meets the requirements of this Section 9.13.

9.14 Military Service

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code section 414(u).

ARTICLE X Amendment and Termination

10.01 Amendment

The Board of Pensions may amend the Plan at any time to comply with requirements of the Code and applicable regulations. The Plan may also be amended by the General Assembly, provided that such amendment shall have been proposed—

- (a) by the Board of Pensions; or
- (b) by written petition presented at the preceding meeting of the General Assembly and signed by a minimum of 25 delegates thereof;

and provided further that the text of such amendments and the names of its sponsor or sponsors shall have been published in the official church publication, if any, at least 30 days prior to the meeting of the General Assembly at which action thereon is taken. If there is no official church publication at the time the amendment is proposed pursuant to this Article X, the Board of Pensions shall provide notice of any such amendment to each Member of the Plan. Any amendment which, in the judgment of the Board of Pensions, should be adopted may be adopted ad interim by the Board of Pensions, and any amendment so adopted shall be presented for ratification at the next meeting of the General Assembly of the Church after similar advance publication in the official church publication, if any, or advance notice to each Member of the Pension Plan. No amendment shall abridge the rights of Members with respect to their Combined Accumulations as of the date of the adoption of such amendment, nor of any annuities already entered upon, except as provided in Section 9.01(d). No amendment shall operate either directly or indirectly to give any Employer or the Church any interest whatsoever in any funds or property held by the Board of Pensions under the terms hereof, or to permit the corpus or income of the Plan to be used for or diverted to purposes other than the exclusive benefit of Members or their beneficiaries. No amendment shall modify the vesting rules of Section 2.08.

10.02 Termination

- (a) While it is expected that the Plan will be continued indefinitely, the Board of Pensions may terminate the Plan at any time, provided the prior notice required for amendment of the Plan under Section 10.01 are met. In the event of such termination of the Plan, the amounts maintained in accounts of affected Members shall, unless the Board of Pensions exercises its right pursuant to Section 10.02(c), remain to be used by the Board of Pension to pay benefits to or on

behalf of the affected Members in accordance with applicable provisions of the Plan.

- (b) In accordance with rules and procedures from time to time established by the Board of Pensions, an Employer may terminate participation in this Plan upon ceasing all future contributions to this Plan and providing proper written direction to the Board of Pensions. In the event of such termination, amounts maintained in the Accounts of affected Members shall remain to be used by the Board of Pensions to pay benefits to or on behalf of such affected Members in accordance with applicable provisions of the Plan.
- (c) In the event of termination of the Plan pursuant to either subsection (a) or (b), the Board of Pensions shall, notwithstanding anything in this Plan to the contrary, have the right, in its sole discretion, to make a single sum payment to each affected Member or Beneficiary with benefit rights under the Plan in lieu of making the benefit payments otherwise provided for herein, thereby fully discharging the Plan and the Board of Pensions of all liability with respect thereto; provided, however, that in the event of such distribution, the Employer shall not make contributions to an alternative section 403(b) contract that is not part of the Plan during the prior period beginning on the date of Plan termination and ending twelve (12) months after the distribution of all assets from the Plan, except as permitted in the applicable Treasury Regulations.

ARTICLE XI Trust and Trustee

11.01 Existence of Trust

The Board of Pensions has entered into a Trust Agreement with the Trustees to hold the funds accumulated under the provisions of the retirement income accounts administered by the Board of Pensions under this Plan.

11.02 Exclusive Benefit Rule

The Trust Fund shall be received, held in trust, and disbursed by the Trustee in accordance with the provisions of the Trust Agreement and this Plan. Subject to Code section 414(p), no part of the Trust Fund shall be used for or diverted to purposes other than for the exclusive benefit of Members and their Beneficiaries or the payment of reasonable administrative expenses. For this purpose, assets are treated as diverted to the Employer if there is a loan or other extension of credit from assets in the Trust Fund to the Employer. No person shall have any interest in, or right to, the Trust Fund or any part thereof, except as specifically provided for in this Plan or the Trust Agreement or both.

11.03 Appointment and Removal of the Trustees

The appointment, removal, and terms and conditions of service of the Trustees shall be determined by the Board of Pensions.

11.04 Powers of Trustees

All contributions under the retirement income accounts administered by the Board of Pensions will be paid to the Trustees. The Trustees shall have such powers to hold, invest, reinvest, or to control and disburse assets of the Trust Fund as set forth in the Trust Agreement or this Plan. The Trustees shall also have the authority to make allocations with respect to individual Member's Accounts and to notify Members of the amount of their Account balances at least annually.

11.05 Integration of Trust

The Trust Agreement shall be deemed to be a part of this Plan, and all rights of Members or others under this Plan shall be subject to the provisions of the Trust Agreement.

11.06 Delegation of Authority

The Trustees may authorize any agent or agents to carry out their duties, and may employ such counsel, auditors, and other specialists and such clerical, actuarial and other services as it may require in carrying out the provisions of this Plan.

ARTICLE XII Contribution Limitations

12.01 Maximum Contributions

- (a) The Contributions for any Plan Year on behalf of a Member (not including any additional elective contributions described under Code section 414(v) or any Rollover Contributions or Transfer Contributions) shall not exceed the Member's Defined Contribution Limit. For any Plan Year, a Member's Defined Contribution Limit shall be an amount equal to the lesser of:
 - (1) 100% of the Member's "includible compensation" as defined under Code section 403(b)(3), or
 - (2) the dollar limit under Code section 415(c)(1)(A) (\$46,000 in 2008), as adjusted under Code section 415(d)(1)(B).
- (b) Notwithstanding any provision of Section 12.01(a) to the contrary, the Defined Contribution Limit of a Member who has made an election under Code section 415(c)(7)(A) shall be determined under such Code section and the regulations issued thereunder.

- (c) In the case of an individual described in Code section 415(c)(7)(B) who is performing services outside the United States, the Defined Contribution Limit for any Plan Year shall not be treated as exceeding the limitation of subsection 12.01(a) if contributions with respect to such Member are not in excess of the greater of \$3,000 or the individual's includible compensation as defined under Code section 403(b)(3).

12.02 Limits on Member Before-Tax Contributions

- (a) **Elective Deferral Limit.** Except as provided in subsections 12.02(b) and (c), the maximum amount of a Member's Before-Tax Contributions under the Plan for any calendar year shall not exceed the applicable dollar amount established under Code section 402(g)(1)(B) (\$15,500 for 2008). This limitation shall be adjusted for cost-of-living in accordance with Code section 402(g)(4). To the extent that the contribution limitation under Code section 402(g) is violated, such violation will affect only the individual Member with respect to whom the excess contribution is made and shall affect no other Plan Member.
- (b) **Special Section 403(b) Catch-up Limitation for Employees With 15 Years of Service.** Because each Employer is a qualified organization (within the meaning of Treasury Regulation section 1.403(b)-4(c)(3)(ii)), the applicable dollar amount under Sections 12.02(a) for any "qualified employee" is increased by the least of:
 - (1) \$3,000;
 - (2) The excess of:
 - (A) \$15,000, over
 - (B) The total special 403(b) catch-up elective deferrals made for the qualified employee by the Employer for prior years; or
 - (3) The excess of:
 - (A) \$5,000 multiplied by the number of years of service of the qualified employee with the Employer, over
 - (B) The total Member Before-Tax Contributions made for the qualified employee by the Employer for prior years.

For purposes of this Section 12.02(b), a "qualified employee" means an employee who has completed at least 15 years of service taking into account employment with all Employers.

- (c) **Age 50 Catch-up Elective Deferral Contributions.** A Member who will attain age 50 or more by the end of the calendar year is permitted to elect an additional

amount of Member Before-Tax Contributions, up to the maximum age 50 catch-up elective deferral limit for the year. The maximum dollar amount of the age 50 catch-up elective deferral limit for a year is \$5,000 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under the Code.

- (d) **Coordination.** Amounts in excess of the limitation set forth in subsection 12.02(a) shall be allocated first to the special 403(b) catch-up contribution under Section 12.02(b) and next as an age 50 catch-up contribution under Section 12.02(c). However, in no event can the amount of the Member Before-Tax Contributions for a year be more than the Member's taxable compensation for the year.
- (e) **Special Rule for a Member Covered by Another Plan.** For purposes of this Section 12.02, if the Member is or has been a participant in one or more other plans under Code section 403(b) (and any other plan that permits elective deferrals under section 402(g) of the Code), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section 12.02. For this purpose, the Board of Pensions shall take into account any other such plan for which the Board of Pensions receives from the Member sufficient information concerning his participation in such other plan.
- (f) **Correction of Excess Elective Deferrals.** If a Member's Before-Tax Contributions for any calendar year exceeds the limitations described above, or the Member's Before-Tax Contributions for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Member under another plan of the Employer under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code), and the Member notifies the Board of Pensions on or before the March 1 following the taxable year that all or a specified part of a Before-Tax Contributions made for the Member's benefit represents an excess deferral, the Board of Pensions shall cause such excess deferral, adjusted for allocable income or loss in accordance with Code section 402(g)(2), to be distributed to the Member no later than the April 15 following the calendar year in which such excess deferral was made. No distribution of an excess deferral shall be made during the taxable year of a Member in which the excess deferral was made unless the correcting distribution is made after the date on which the Plan received the excess deferral and both the Member and the Plan designates the distribution as a distribution of an excess deferral.

ARTICLE XIII
Non-Qualified Church Controlled Organizations

13.01 Non-Qualified Church-Controlled Organizations

Notwithstanding any provisions of the Plan to the contrary, the provisions of this Article XIII shall apply to any Employer that is a Non-QCCO.

13.02 Establishment of Plan.

To the extent permitted by applicable law, Treasury Regulations and other guidance, an Employer described in Section 13.01 intends that any annuity contracts issued by an insurance company or mutual funds provided by a regulated investment company will be investments of this Plan and will not be subject to the requirements of either Code section 403(b)(1) or 403(b)(7) and instead will be subject to the requirements of Code section 403(b)(9).

13.03 Multiple Vendor Requirements

The following provisions apply to an Employer described in Section 13.01 that establishes a plan pursuant to this Plan document and utilizes multiple Funding Vehicles under its Plan.

- (a) **Plan Administrator.** Notwithstanding the provisions of Article IX, the Employer shall be responsible for the administration of its Plan and coordinating compliance with respect to all Vendors and Funding Vehicles under its Plan.
- (b) **Current and Former Vendors.** To the extent required by applicable law, regulations and other guidance, each Employer shall maintain a list of all Vendors included under the Plan. Such list is hereby incorporated as part of the Plan as required by Code section 403(b), the applicable Treasury regulations and other guidance. Each Vendor and the Employer shall exchange such information as may be necessary to satisfy Code section 403(b) or other requirements of applicable law. In the case of a Vendor that has ceased to be a Vendor eligible to receive contributions under the Plan or a Vendor holding assets under the Plan pursuant to a contract exchange described under Treasury Regulation section 1.403(b)-10(b)(2), the Employer shall keep the Vendor informed of the name and contact information of the Employer in order to coordinate information necessary to satisfy Code section 403(b) or other requirements of applicable law.
- (c) **Relationship of Plan to Vendor Contracts.** The Employer shall be responsible for ensuring that there is no inconsistency between the terms of this Plan and the terms of any Vendor Contract(s) used to provide Funding Vehicles under the Plan. In the event there is any inconsistency, the terms of this Plan document shall control.

- (d) **Exchange of Information.** To the extent that an Employer enters into agreements with one or more Vendors in addition to the Board, the Employer shall be responsible for ensuring that the terms of all Vendor Contracts provide for the exchange of information among the Employer, the Board and such other Vendors to the extent necessary to comply with the requirements of the Code and applicable Treasury Regulations. Such exchange of information shall include:
- (1) Information from the Employer as to whether the Member has had a severance from employment (for purposes of the distribution restrictions under Code section 403(b)(11);
 - (2) in the case of a hardship withdrawal that is automatically deemed to be necessary to satisfy the Member's financial need (pursuant to Treasury Regulation section 1.401(k)-1(d)(3)(iv)(E)), the Vendor notifying the Employer of such withdrawal in order for the Employer to implement the resulting six-month suspension of the Member's right to make Before-Tax Contributions and/or After-Tax Contributions under the Plan;
 - (3) the Vendor providing information to the Employer or other Vendors concerning the Member's or Beneficiary's Code section 403(b) contracts, custodial accounts, or retirement income accounts or qualified employer plan benefits (to enable a Vendor to determine the amount of any plan loans and any rollover accounts that are available to satisfy the financial need under the hardship withdrawal rules (pursuant to Treasury Regulation section 1.401(k)-1(d)(3)(iv)(E)); and
 - (4) information necessary in order for the Employer to satisfy other tax requirements, including the following: (i) the amount of any plan loan that is outstanding to the Member in order for a Vendor to determine whether an additional plan loan satisfies the loan limitations of Code section 72(p) so that any such additional loan is not a deemed distribution under Code section 72(p)(1); and (ii) information concerning the Member's or Beneficiary's after-tax employee contributions in order for a Vendor to determine the extent to which a distribution is includible in gross income.
- (e) **Changes in Investments and Contract Exchanges**
- (1) Contributions Invested Under Funding Vehicle Provided by Board of Pensions. All contributions to the retirement income accounts administered by the Board of Pensions under the Plan shall be invested in accordance with the provisions of Article V. No investment exchanges or contract exchanges with any other Vendor, regardless of whether the Vendor is eligible to receive contributions under the Plan, shall be permitted with respect to such contributions.

- (2) Contributions Invested Under Funding Vehicles Provided by Vendors Other than Board of Pensions. To the extent provided in the Vendor Contracts, a Member may make changes in the investment of his Account balance among Vendors under the Plan. Further, to the extent provided in the Vendor Contracts, the Employer may elect to allow each Member to transfer the investment of his Account balance from a Vendor approved to receive contributions under the Plan to a Vendor that is not eligible to receive contributions under the Plan. Any such exchange or transfer must be made in accordance with the requirements of Treasury Regulation section 1.403(b)-10(b)(2).
- (f) **Plan to Plan Transfers.** To the extent provided in a Vendor Contract, the Employer may allow a Member to transfer the investment of his Account balance to be transferred to another Code section 403(b) plan. Any such transfer must be made in accordance with the requirements of Treasury Regulation section 1.403(b)-10(b)(3). Except as permitted under Section 6.12 and Section 6.13(a), the Plan does not permit transfers of any portion of a Member's Account held by the Trustees to be transferred to another plan described in Code section 403(b) or any other retirement plan.
- (g) **Vendor Contracts Control Investment, Distribution and Claims.** The terms of the individual Vendor Contract shall control the investment, distributions of, and loans made with respect to all Contributions made pursuant to such Vendor Contract, as well as the resolution of any claims relating to such Contributions.

13.04 Nondiscrimination Rules Applicable to Members' Before Tax Contributions

- (a) Universal Availability. Every employee of a participating Employer described in Section 13.01 shall be eligible to make Before-Tax Contributions to the Plan immediately upon becoming employed by the Employer. An Employer shall be permitted to exclude employees who normally work fewer than 20 hours per week or any other category of employee that may be permissively excluded under Code section 403(b)(12)(A). Any such exclusion must be specifically stated in the Employer's Schedule.

For purposes of this Section 13.04(a), an employee is considered to work fewer than 20 hours per week if, for the 12-month period beginning on the date the employee's employment commenced, the Employer reasonably expects the employee to work fewer than 1,000 hours of service and, for each Plan Year ending after the close of that 12-month period, the employee has worked fewer than 1,000 hours of service.

- (b) Effective Opportunity. For purposes of Section 13.02(a), an employee is not treated as being permitted to make Before-Tax Contributions unless the employee is provided an effective opportunity (within the meaning of Treasury Regulation

section 1.403(b)-5(b)(2)) to make such Before-Tax Contributions at least once during each Plan Year.

13.05 Contribution Percentage

- (a) For each Plan Year, in the case of Employers described in Section 13.01, the Average Contribution Percentage (“ACP”) of Highly Compensated Employees must bear a relationship to the ACP for Non-Highly Compensated Employees which satisfies either of the following tests for nondiscrimination:
 - (1) The ACP for Members who are Highly Compensated Employees is not more than the ACP for Members who are Non-Highly Compensated Employees multiplied by 1.25; or
 - (2) The ACP for Members who are Highly Compensated Employees is not more than the ACP for Members who are Non-Highly Compensated Employees multiplied by 2, and the ACP for Members who are Highly Compensated Employees does not exceed the ACP for Members who are Non-Highly Compensated Employees by more than two (2) percentage points.
- (b) If neither of the requirements of Section 13.05(a)(1) or (a)(2) is satisfied, then the Excess Contributions with respect to Highly Compensated Employees shall be distributed, notwithstanding any other provisions of the Plan. Such Excess Contributions, including any income allocable thereto, shall be distributed beginning with the contributions made on behalf of Members with the highest dollar amount of contributions, to the extent necessary to meet the requirements of Section 13.05(a)(1) or (a)(2), whichever is met first. Any reduction in contributions shall be made first from After-Tax Contributions. After the After-Tax Contributions for such Plan Year have been reduced to zero, further reductions shall be made from any Employer matching contributions made as a result of eligible Member contributions.
- (c) Income or losses allocable to Excess Contributions on any After-Tax Contributions and any Employer matching contributions made as a result of eligible Member contributions shall be determined based on a method of adjustment as selected by the Board of Pensions and as permitted under the Code.
- (d) Distributions under this Section 13.05 shall be made no later than the last day of each Plan Year to the Members on whose behalf such Excess Contributions were made for the preceding year.

- (e) At any time during the Plan Year, the Employer may make an estimate of the amount of any After-Tax Contributions or Employer matching contributions made as a result of eligible Member contributions. that will be permitted under this Section 13.05 and may reduce the maximum permitted contributions for Highly Compensated Employees under Sections 4.02 and 4.03 to the extent the Employer determines in its sole discretion is necessary to satisfy at least one of the requirements of Section 13.05(a).

13.06 Definitions.

For purposes of this Article XIII, the following definitions shall apply:

- (a) Average Contribution Percentage means the average of the Contribution Percentages of the Eligible Members in a group (calculated separately for each Member in the group).
- (b) Contribution Percentage means the ratio (expressed as a percentage) of the Member's Contribution Percentage Amounts to the Member's Compensation for the Plan Year (whether or not the Employee was a Member for the entire Plan Year).
- (c) Contribution Percentage Amount means the sum of the After-Tax Contributions and any Employer matching contributions made as a result of eligible Member contributions made under the Plan on behalf of the Member for the Plan Year.
- (d) Eligible Member means any Member who is otherwise authorized under the terms of the Plan to make a contribution to the Plan during the Plan Year.
- (e) Excess Contributions shall mean the amount by which After-Tax Contributions and any Employer contributions made as a result of eligible Member contributions must be reduced under Section 13.05(b) for any individual.
- (f) Funding Vehicle shall mean the annuity contracts issued by an insurance company qualified to issue annuities, as defined in Code section 403(b)(1), the custodial accounts issued by a regulated investment company, as defined in Code section 403(b)(7), and the retirement income accounts, as defined in Code section 403(b)(9), utilized for funding benefits payable under the Plan and specifically approved by the Employer for use under the Plan.
- (g) Highly Compensated Employee shall mean both highly compensated active employees and highly compensated former employees.
 - (1) A highly compensated active employee includes any employee who performs service for the Employer during the Plan Year and who, during the calendar year immediately preceding the Plan Year received Compensation from the Employer in excess of \$90,000 (as adjusted

pursuant to Code section 415(d)) and was in the top-paid group of employees for such year.

- (2) For purposes of determining who is a Highly Compensated Employee, the term Compensation shall mean compensation within the meaning of section 415(c)(3) of the Code.
 - (3) A highly compensated former employee includes any employee who terminated employment (or was deemed to have terminated employment) prior to the Plan Year, performs no service for the participating Employer during the Plan Year, and was a highly compensated active employee for either the service termination year or any Plan Year ending on or after the employee's fifty-fifth (55th) birthday.
 - (4) The determination of who is a Highly Compensated Employee, including the determinations of the number and identity of employees in the top-paid group, will be made in accordance with Code section 414(q) and the regulations thereunder.
- (h) Vendor shall mean the Board of Pensions and any other provider of a Funding Vehicle under the Plan.
- (i) Vendor Contract shall mean an agreement between a Member and/or Employer and Vendor that constitutes or governs an annuity contract, custodial account, or retirement income account utilized as a Funding Vehicle under the Plan. No separate Vendor Contract shall be necessary with regard to an agreement with the Board of Pensions in the case of an Employer that remits contributions to the Board pursuant to this Plan.

13.07 Allocation of Responsibility.

The Board of Pensions shall not be liable for any assessments, penalties, or taxes of any kind imposed by any Federal authority because of the failure of the Employer to satisfy the requirements of Code section 403(b)(12). It is the responsibility of the Employer to take all action necessary to determine whether the requirements of Code section 403(b)(12) are met.