



The State Bar of California

OPEN SESSION AGENDA ITEM 704 APRIL 2020

DATE: April 16, 2020

TO: Members, Board of Trustees

FROM: Vanessa Holton, General Counsel
Sean Strauss, Assistant General Counsel

SUBJECT: Approval of Amendments to Retiree Health Plan for Retirees of the State Bar

EXECUTIVE SUMMARY

The State Bar provides payments toward retired confidential and executive employees' medical and vision insurance premiums in an amount equal to current active employees upon fulfillment of certain eligibility criteria, including reaching 15 years of total service in the California Public Employees' Retirement System (CalPERS), as earned with any CalPERS agency. The State Bar has agreed with the Service Employees' International Union, Local 1000 (SEIU) in the successor 2020-2022 Memorandum of Understanding (MOUs) to extend these retiree benefits to represented employees on the same terms that are presently offered to confidential employees. In order to accomplish this extension of retiree benefits to represented employees, the State Bar of California's Post-Retirement Welfare Benefits Plan (Plan) must be amended. This item seeks the Board of Trustees' approval for amendment of the Plan, which will maintain the current retirement benefit for confidential and executive employees and extend that benefit to represented employees. Approval of this item is contingent upon the Board's separate approval of the tentative agreement between the State Bar and SEIU in the MOUs.

BACKGROUND

Prior to January 1, 2020, the State Bar provided premium payments toward certain retired executive employees' medical and vision insurance coverage. In November 2019, the Board approved extension of these retiree premium payment benefits to confidential employees effective January 1, 2020, as funded by 2019's annual licensing fee legislation, Senate Bill 176. The Board also approved recognition of prior CalPERS service to determine eligibility for this

retiree benefit for both executive and confidential employees. To accomplish these objectives, the Board authorized amendment of the Plan to provide premium payments at the same level as current active employees to executive and confidential employees who retire on or after January 1, 2020, and who have a total of at least 15 years of CalPERS service, including service with the State Bar or any other CalPERS agency.

In the November 2019, Board item seeking approval of this most recent amendment of the Plan, staff noted that, "The present agenda item seeks approval only as related to the extension of retiree health benefits to confidential employees as the State Bar is currently in negotiations with its represented units regarding a similar extension for this population." Negotiations with the SEIU have concluded and the State Bar, subject to Board approval of the MOUs between the parties, has agreed to provide represented employees with retiree health benefits on the same terms as are currently provided to confidential employees.

DISCUSSION

As noted above, the current Plan and its amendments extend retiree insurance premium payment benefits to confidential and executive employees. The successor MOUs, if approved by the Board, will provide a retired represented employee with retiree health and vision insurance premium payments at the same level as current active State Bar employees if they: (1) retire on or after January 1, 2020; (2) have 15 years of total service in CalPERS, with any CalPERS agency; (3) were a State Bar employee at the time of retirement; (4) were a participant in The Public Employees' Medical & Hospital Care Act (PEMHCA) at the time of retirement; (5) continue to participate in PEMHCA after retirement; and (6) apply for retirement benefits under CalPERS within 120 days after termination of State Bar employment.

In order to accomplish extension of this retiree health benefit to represented employees, the Plan should be amended as follows: The defined term, "Confidential Employee," will be replaced throughout the Plan with "Rank And File Employee," which is defined to include any employee of the State Bar who is not an Executive Staff Employee at the time he or she terminates employment. This revision will thus include both confidential and represented employees within the definition of "Rank And File Employee," entitling both to the same benefits under the Plan. A draft of the amended Plan reflecting this revision is contained in Attachment A hereto.

FISCAL/PERSONNEL IMPACT

Based on the recommendation of the State Auditor, on July 9, 2019, the Assembly Judiciary Committee (Committee) passed an amended version of Senate Bill 176 that included a significant increase to the annual licensing fee for 2020, including \$17 to support retiree health benefits for State Bar employees. On October 9, 2019, the Governor signed Senate Bill 176 into law (Stats. 2019, ch. 698).

The State Bar's actuary completed an analysis as using census data from the most current actuarial report showing an estimated annual actuarially determined cost of \$3,660,000 as of

December 31, 2020, to provide retiree health benefits to all represented employees on the terms proposed in the attached draft Plan. Of the estimated \$3,660,000 annually, approximately 80 percent of those costs will be funded from the licensing fee increase and the balance will be distributed to other funds pursuant to the State Bar's cost allocation policy.

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 3. Improve the fiscal and operational management of the State Bar, emphasizing integrity, transparency, accountability, and excellence.

Objective: b. Improve staff morale and career satisfaction through recognition of performance, career path development, transparent and collaborative communication, and recognition and encouragement of innovation, efficiencies, and money saving ideas.

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees approves amendment and restatement of the State Bar of California Post Retirement Welfare Benefits Plan in the form contained in Attachment A hereto.

ATTACHMENT(S) LIST

- A. [Proposed] State Bar of California Post-Retirement Welfare Benefits Plan, as amended effective April 16, 2020.

**STATE BAR OF CALIFORNIA
POST-RETIREMENT WELFARE BENEFITS PLAN**

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POST-RETIREMENT WELFARE BENEFITS PLAN**

Table Of Contents

	<u>Page</u>
ARTICLE 1. GENERAL PROVISIONS	2
1.01. Plan Name.	2
1.02. Effective Date.....	2
1.03. Exclusive Benefit.....	2
1.04. Income Tax And ERISA Status.	2
1.05. Administrator Of The Plan.....	2
1.06. Defined Terms.	2
ARTICLE 2. GENERAL DEFINITIONS.....	3
2.01. Administrator.....	3
2.02. CalPERS.....	3
2.03. Code.	3
2.04. Dependent.	3
2.05. Employee.	3
2.06. Employer.....	3
2.07. ERISA.	4
2.08. Executive Staff Employee.	4
2.09. HIPAA.	4
2.10. Participant.....	4
2.11. PEMHCA.....	4
2.12. Plan.....	4
2.13. Plan Year.	5
2.14. Rank And File Employee.....	5
2.15. Retiree.	5
2.16. Termination Of Employment.	5
2.17. Year Of Service.....	5
ARTICLE 3. ELIGIBILITY AND PARTICIPATION	6
3.01. Eligible Retirees; Excluded Retirees.	6
3.02. Eligibility Requirements.	7
3.03. Commencement Of Participation.	8
3.04. Participation.	8
3.05. Application For Participation.....	9
3.06. Termination Of Participation.....	9
ARTICLE 4. PLAN BENEFITS.....	9
4.01. Benefits In General.	9
4.02. Self-Insured Benefits.....	10
4.03. Health Insurance Premium Benefits.....	10
4.04. Benefit Limitations.....	11
4.05. Benefits Upon Death.....	12
4.06. Working Retirees.	13
4.07. Distributions To Incapacitated Participants.....	13
4.08. Repayment Of Overpayment Of Benefits.....	14

ARTICLE 5.	PLAN ADMINISTRATION.....	14
5.01.	Employment Records.....	14
5.02.	Reports And Disclosure.....	15
5.03.	Retention Of Records.....	15
5.04.	Powers And Responsibilities.....	15
5.05.	Designation Of Administrative Authority.....	15
5.06.	Allocation And Delegation Of Responsibilities.....	16
5.07.	Powers And Duties Of The Administrator.....	16
5.08.	Administrative Functions.....	17
5.09.	Appointment And Responsibility Of Representatives.....	17
5.10.	Appointment Of Fiduciaries And Agents.....	18
5.11.	Compensation Of Administrator.....	18
5.12.	Use Of Electronic Media.....	18
5.13.	HIPAA Privacy, Security And Transaction Standards.....	18
ARTICLE 6.	CLAIMS PROCEDURES.....	23
6.01.	Request For Information.....	23
6.02.	Claims For Benefits.....	23
6.03.	Filing Claims.....	23
6.04.	Initial Determination Of Claim.....	24
6.05.	Claims Appeals.....	25
6.06.	Legal Actions.....	27
6.07.	Administration Pending Resolution Of Disputes.....	27
6.08.	Time.....	27
ARTICLE 7.	AMENDMENTS AND TERMINATION.....	28
7.01.	No Vested Rights.....	28
7.02.	Amendments.....	28
7.03.	Plan Termination.....	28
ARTICLE 8.	MISCELLANEOUS.....	29
8.01.	Nonalienation Of Benefits.....	29
8.02.	Limitation Of Rights; Employment Relationship.....	29
8.03.	Limitation Of Rights Of Participants And Others.....	30
8.04.	Release From Liability.....	30
8.05.	Indemnity.....	30
8.06.	Expenses.....	30
8.07.	Insurers Not A Party.....	31
8.08.	State Laws.....	31
8.09.	Construction.....	31
8.10.	Headings.....	31
8.11.	Uniformity.....	31
8.12.	Gender And Number.....	31
8.13.	Controlling Law.....	32
8.14.	Severability.....	32
8.15.	Waiver.....	32
8.16.	Entire Document.....	32

STATE BAR OF CALIFORNIA
POST-RETIREMENT WELFARE BENEFITS PLAN

The State Bar Of California (Employer) hereby adopts the amended and restated State Bar Of California Post-Retirement Welfare Benefits Plan (Plan) on the date set forth on the signature page hereof, for the exclusive benefit of its eligible retirees and certain members of their families.

RECITALS

Whereas:

- A. The Employer has provided post-retirement medical benefits to its eligible executive staff employees pursuant to the Plan as originally adopted effective as of January 1, 2007, as amended as of July 11, 2008, and as most recently amended as of December 31, 2019.
- B. The Employer has also provided health benefits to its eligible employees and certain of its retired employees pursuant to the Public Employees' Medical and Hospital Care Act (PEMHCA) that is administered by the Board of Administration of the California Public Employees' Retirement System (CalPERS).
- C. The Employer makes equal minimum contributions towards these benefits for both eligible active employees and eligible retired employees in accordance with PEMHCA's requirements.
- D. In enacting the most recent fee legislation for attorneys in the State of California, the Legislature determined that the Employer should expand the provision of post-retirement medical benefits to other employees of the Employer.
- E. The Employer amended the Plan in order to provide post-retirement medical benefits to the rank and file employees of the Employer whose employment is not governed by a collective bargaining agreement.
- F. The Employer also amended the Plan to clarify that the Plan has always included vision benefits in addition to major medical benefits as part of the post-retirement medical benefits to its eligible employees.
- G. The Employer has determined that it is in the best interests of the Employer and its eligible employees to restate the Plan in its entirety in order to reflect the most recent restatement of the Plan and the recent amendments to the Plan in a single document.

OPERATIVE PROVISIONS

Now, therefore, the Employer adopts the amended and restated Plan upon the following terms and conditions:

ARTICLE 1. GENERAL PROVISIONS

1.01. Plan Name.

The name of this Plan is the "State Bar Of California Post-Retirement Welfare Benefits Plan."

1.02. Effective Date.

The effective date of this amended and restated Plan is January 1, 2020.

1.03. Exclusive Benefit.

It is the intention of the Employer that the Plan is created and maintained for the exclusive benefit of the Employer's eligible Retirees and their Dependents.

1.04. Income Tax And ERISA Status.

The Plan is intended to qualify as a health plan under Code sections 105 and 106 covering health expenses through the reimbursement of Retiree health insurance premiums such that any benefits that a Retiree or a Dependent receives under the Plan shall be excluded from gross income. The Plan is a "governmental plan" as defined in Code section 414(d) and section 3(32) of ERISA and, as such, is exempt from the provisions of ERISA.

1.05. Administrator Of The Plan.

The person(s), individual(s) or committee appointed by the Employer shall be the Administrator of the Plan. The Administrator may engage the services of one or more third parties to assist the Administrator with the administration of the Plan. If the Employer does not appoint an Administrator, the Employer's Chief Administrative Officer shall be the Administrator.

1.06. Defined Terms.

All initially capitalized terms are defined terms and will be defined in the General Definitions article.

ARTICLE 2. GENERAL DEFINITIONS

For purposes of this Plan, unless otherwise clearly apparent from the context, the following phrases or terms shall have the following indicated meanings:

2.01. Administrator.

"Administrator" means the person(s), individual(s) or committee appointed by the Employer from time to time with authority and responsibility to manage and direct the operation and administration of the Plan.

2.02. CalPERS.

"CalPERS" means the California Public Employees' Retirement System.

2.03. Code.

"Code" means the Internal Revenue Code of 1986, as it may be amended from time to time.

2.04. Dependent.

"Dependent" means a person entitled under the provisions of the PEMHCA group health plan that covers a Participant (or that covered a deceased Participant prior to his or her death) to receive benefits payable under the PEMHCA group health plan because of the person's relationship to the Participant.

2.05. Employee.

"Employee" means an individual (i) who is employed by the Employer, (ii) who is classified as a "regular employee" by the Employer, (iii) who is on the regular payroll of the Employer, (iv) for whom the Employer withholds employment taxes, and (v) for whom the Employer issues an IRS Form W-2. Therefore, for example, a common law employee for whom the Employer does not issue a Form W-2 is not an "Employee." "Employee" does not include casual or contract employees. An individual's status as an "Employee" will be determined solely by the Administrator in its sole and absolute discretion.

2.06. Employer.

"Employer" means the Employer adopting the Plan and any successor assuming the Plan, which shall be responsible for the administration and

management of the Plan except for those duties specifically delegated to the Administrator.

2.07. ERISA.

"ERISA" means the Employee Retirement Income Security Act of 1974, Public Law 93-406, enacted September 2, 1974, as it may be amended from time to time.

2.08. Executive Staff Employee.

"Executive Staff Employee" means an Employee who is classified by the Employer as an "executive staff employee" and whose terms of employment are set forth under the Employer's "Rules and Regulations Pertaining to the Employment of Executive Staff Employees." An individual's status as an "Executive Staff Employee" will be determined solely by the Administrator in its sole and absolute discretion.

2.09. HIPAA.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as it may be amended from time to time, and the regulations issued thereunder.

2.10. Participant.

"Participant" means any Retiree who has (i) met the Plan's eligibility requirements, (ii) properly completed and returned the applications and agreements required under, and in accordance with, the Application For Participation section, below, (iii) commenced participation in the Plan pursuant to the Commencement Of Participation section, below, and (iv) is or may become eligible to receive a benefit under the Plan, or whose Dependents may be eligible to receive any such benefit.

2.11. PEMHCA.

"PEMHCA" means the Public Employees' Medical and Hospital Care Act as set forth in California Government Code sections 22750 et seq. as in effect from time to time.

2.12. Plan.

"Plan" means the retiree health insurance premium reimbursement plan as set forth herein and any amendments hereto.

2.13. Plan Year.

"Plan Year" means the twelve (12) consecutive month period ending on December 31 of each year.

2.14. Rank And File Employee.

"Rank And File Employee" means an Employee who is Employed by the Employer immediately before he or she terminates employment and who is not an Executive Staff Employee at that time. An individual's status as a "Rank And File Employee" will be determined solely by the Administrator in its sole and absolute discretion.

2.15. Retiree.

"Retiree" means a former Employee who retired from the Employer and who is eligible for benefits under the Plan in accordance with the criteria set forth in the Eligibility And Participation article, below, and the Plan Benefits article, below.

2.16. Termination Of Employment.

"Termination Of Employment" means no longer being an Employee for any reason.

2.17. Year Of Service.

"Year Of Service" means either of the following:

A. Year Of State Bar Service.

"Year Of State Bar Service" means a completed period of one (1) year of continuous, uninterrupted service as an Employee, subject to the following rules:

1. Such service must be regular employment as an Employee that is either (i) full-time or (ii) part-time on at least fifty percent (50%) of a full-time basis.
2. Such service will include any period of authorized paid leave of absence while an Employee and any leave for military service while an Employee, but only if the Employee returns to active employment with the Employer as an Employee within the time prescribed by such leave or within the time following military service during which the

Employee's reemployment rights are protected by law, as applicable.

3. Service performed before the effective date of the Plan will be counted as service under the Plan.
4. No service or employment with any entity other than the Employer will be counted as service for any purpose under the Plan.
5. Any periods of service for the Employer in any capacity other than Employee will not be counted as service under the Plan.
6. Service before a Termination Of Employment (or termination of status as an Employee) will be added to service earned after an individual again becomes an Employee in order to count the person's total Years Of Service.

B. Year Of CalPERS Service.

"Year Of CalPERS Service" means an Employee's total service credit as calculated by the California Public Employees' Retirement System pursuant to California Government Code section 20069 and related statutes, whether such service was performed for the Employer or for an employer other than the Employer, without inclusion of any service credit purchased by the Employee.

ARTICLE 3. ELIGIBILITY AND PARTICIPATION

3.01. Eligible Retirees; Excluded Retirees.

All Retirees, who are not otherwise excluded from participation in the Plan, are eligible to participate in the Plan after completion of the eligibility requirements set forth in the Eligibility Requirements section, below. The Plan excludes the following Retirees (even if they might otherwise satisfy the eligibility criteria specified in the Plan):

- A. Each Retiree who was not either an Executive Staff Employee or a Rank And File Employee at the time of the Retiree's Termination Of Employment;

- B. Each Retiree who was not eligible for PEMHCA coverage while the Retiree was an active Employee if the Retiree's Termination Of Employment is on or after May 1, 2018;
- C. Each Retiree who was not covered by PEMHCA at the time of the Retiree's Termination Of Employment if the Retiree's Termination Of Employment is on or after May 1, 2018;
- D. A Retiree whose employment is, or immediately before he or she terminated employment with the Employer was, governed by the terms of a collective bargaining agreement between Employee representatives (within the meaning of Code section 7701(a)(46)) and the Employer under which employee benefits were the subject of good faith bargaining, unless the collective bargaining agreement specifically requires participation of such Retirees in the Plan, but only to the extent provided for in the collective bargaining agreement and only to the extent such participation is not inconsistent with the requirements of the Code; and
- E. A worker whom the Employer did not treat as an Employee even if the worker is subsequently determined to be an Employee by a local, State or federal governmental entity or by a court of competent jurisdiction.

3.02. Eligibility Requirements.

In order to become an eligible Retiree and to be eligible to become a Participant in the Plan, the Retiree must satisfy all of the following eligibility requirements:

- A. If the Retiree's Termination Of Employment is before January 1, 2020, the Retiree must have been credited with at least the following Years Of Service as of the Retiree's Termination Of Employment:
 - 1. If the Retiree became an Executive Staff Employee on or before August 19, 2006, and was continuously employed as an Executive Staff Employee from that date until Termination Of Employment, at least fifteen (15) Years Of State Bar Service; or
 - 2. If the Retiree became an Executive Staff Employee after August 19, 2006 (including a Retiree who was reemployed or reinstated as an Executive Staff Employee after such date), at least (i) ten (10) Years Of State Bar Service as an Executive Staff Employee and (ii) fifteen (15) Years Of

State Bar Service as an Employee regardless of whether as an Executive Staff Employee.

- B. If the Retiree's Termination Of Employment is after December 31, 2019, the Retiree must have been credited with at least fifteen (15) Years Of CalPERS Service as of the Retiree's Termination Of Employment.
- C. The Retiree must have been, on the date of the Retiree's Termination Of Employment, either an Executive Staff Employee or a Rank And File Employee.
- D. The Retiree must have been, on the date of the Retiree's Termination Of Employment, a participant in PEMHCA.
- E. After the Retiree's Termination Of Employment, the Retiree must continue to be a participant in PEMHCA.
- F. If the Retiree is a Rank And File Employee, the Retiree's Termination Of Employment must have been on or after January 1, 2020; if the Retiree is an Executive Staff Employee, the Retiree's Termination Of Employment need not have occurred on or after the original effective date of the Plan.
- G. If the Retiree's Termination Of Employment is on or after May 1, 2018, the Retiree must apply for retirement benefits (i.e., a pension) under CalPERS within one hundred twenty (120) days after the Retiree's Termination Of Employment.

3.03. Commencement Of Participation.

Each Retiree who is not otherwise excluded from participation in the Plan shall become a Participant in the Plan on the first day of the month coinciding with or following (i) the Retiree's becoming an eligible Retiree as set forth in the Eligibility Requirements section, above, and (ii) the Retiree's proper completion and return of the applications and agreements required under the Application For Participation section, below, if any. Dependents of Participants may participate in the Plan only as set forth in the Plan.

3.04. Participation.

The Administrator, using employment dates certified by the Employer, shall determine which Retirees are eligible to participate. The Administrator shall notify each Retiree of the Retiree's eligibility and of any application or other requirements for participation. By becoming a

Participant, the Retiree agrees to be bound by all terms, conditions and covenants of the Plan as then in effect or as thereafter amended.

3.05. Application For Participation.

To become a Participant, an eligible Retiree shall, to the extent necessary or appropriate under the procedures established by the Administrator, (i) sign any application or agreements as may be required by the Employer or the Administrator and (ii) return such properly completed applications and agreements to the Employer or the Administrator on or before the deadline established by the Employer or the Administrator.

3.06. Termination Of Participation.

- A. Except as otherwise provided elsewhere in the Plan, a Participant will automatically cease to be a Participant on the earliest of the following dates:
1. The date of the Participant's death;
 2. The date of the Participant's failure to continue to be an eligible Retiree;
 3. The date when the Participant ceases to be covered by PEMHCA; or
 4. The date of the termination of the Plan in accordance with the Amendments And Termination article.
- B. Termination of participation shall not affect the right of a Participant or a Participant's Dependents to claim benefits for expenses incurred prior to such termination. However, no additional expenses incurred after such termination shall be covered by the Plan. For purposes of the Plan, an expense with respect to the reimbursement of insurance premiums shall be "incurred" when the insurance premiums for the month of coverage are due.

ARTICLE 4. PLAN BENEFITS

4.01. Benefits In General.

Subject to the limitations of this Plan Benefits article, the benefits provided under this Plan for a Participant shall consist of

reimbursements in accordance with the Health Insurance Premium Benefits section, below.

4.02. Self-Insured Benefits.

The benefits payable from this Plan are self-insured benefits. Some or all of the benefits payable under this Plan may be paid, but shall not be required to be paid, from a welfare benefit plan trust established by the Employer. Such a trust may be, but shall not be required to be, a tax-exempt trust pursuant to Code section 115 or Code section 501(c)(9). The benefits payable under this Plan, other than any benefits from such a trust, shall be paid from the general assets of the Employer.

4.03. Health Insurance Premium Benefits.

- A. The Plan will periodically reimburse the Participant for the Participant's premiums that are payable to (i) PEMHCA by the Participant (either directly by the Participant or withheld from the Participant's CalPERS benefits) and (ii) the Employer's vision insurance provider (e.g., offered in 2019 through VSP), based upon appropriate proof that such premiums have been paid by the Participant or have been withheld from amounts otherwise payable to the Participant, as determined by the Administrator in its sole and absolute discretion, up to the amount available to the Participant under the Benefit Limitations section, below.
- B. There shall be no reimbursement to or payment on behalf of a Participant under this section to the extent there is other reimbursement to or payment on behalf of the Participant.
- C. The reimbursement of premiums shall be subject to receipt of such proof, forms and materials as the Administrator shall require from time to time. The Plan will reimburse a Participant for the Participant's health insurance premiums only if (i) the Plan or the Employer receives or obtains written verification that the cost has been incurred and the amount of such expense, and (ii) the Participant provides such written statement as the Administrator may require, in its sole discretion, that the cost has not be reimbursed or is not reimbursable under any other health plan and conveying any further information that the Administrator may require.
- D. The benefit provided under this section is intended to comply with the provisions of Code sections 105 and 106 and with the guidance provided by Revenue Ruling 61-146. This section, therefore, will be deemed to be automatically amended to comply

with all legislative changes to, and valid regulations promulgated under, these Code sections, as of the effective date of such legislation or regulations and any subsequent guidance modifying, clarifying or superseding Revenue Ruling 61-146.

- E. The Plan may, in the Employer's or Administrator's sole and absolute discretion, pay any or all of the amounts described above directly to the appropriate third party payee (e.g., CalPERS or VSP) in lieu of making reimbursement to the Participant therefor. In the event of such payment or upon the reimbursement of premiums, the Plan and the Employer shall be relieved of all further responsibility with respect to any such premiums and the provision of benefits under the Plan.

4.04. Benefit Limitations.

A Participant's reimbursements under this Plan for any month shall be limited to the excess, if any, of (i) the applicable percentage set forth below of the total monthly premium cost for the PEMHCA coverage and the Employer's vision insurance coverage (e.g., offered in 2019 through VSP), for the Participant and the Participant's Dependents, over (ii) the then current minimum monthly contribution required under California Government Code section 22892(b) (e.g., one hundred thirty-six dollars (\$136) per month in 2019 and one hundred thirty-nine dollars (\$139) per month in 2020). The applicable percentage is determined as follows:

- A. If the Retiree is an Executive Staff Employee whose Termination Of Employment is before January 1, 2020, then:
 - 1. If the Retiree (i) became an Executive Staff Employee on or before August 19, 2006, (ii) was continuously employed as an Executive Staff Employee from that date until Termination Of Employment, and (iii) has at least fifteen (15) Years Of State Bar Service, the applicable percentage shall be one hundred percent (100%).
 - 2. If the Retiree (i) became an Executive Staff Employee after August 19, 2006 but before January 1, 2018, (ii) was continuously employed as an Executive Staff Employee from that date until Termination Of Employment, (iii) has at least ten (10) Years Of State Bar Service as an Executive Staff Employee, and (iv) has at least fifteen (15) Years Of State Bar Service, the applicable percentage shall be one hundred percent (100%).

3. If the Retiree (i) became an Executive Staff Employee on or after January 1, 2018, (ii) was continuously employed as an Executive Staff Employee from that date until Termination Of Employment, (iii) has at least ten (10) Years Of State Bar Service as an Executive Staff Employee, and (iv) has at least fifteen (15) Years Of State Bar Service, the applicable percentage shall be the percentage paid by the Employer for an active Executive Staff Employee (e.g., eighty percent (80%) for 2019).
- B. If the Retiree is an Executive Staff Employee whose Termination Of Employment is on or after January 1, 2020, then:
1. If the Retiree (i) became an Executive Staff Employee before January 1, 2018, and (ii) has at least fifteen (15) Years Of CalPERS Service, the applicable percentage shall be either:
 - a. The percentage paid by the Employer for an active Executive Staff Employee (e.g., eighty percent (80%) for 2019) if the Retiree has less than ten (10) Years Of State Bar Service; or
 - b. One hundred percent (100%) if the Retiree has at least ten (10) Years Of State Bar Service.
 2. If the Retiree (i) became an Executive Staff Employee on or after January 1, 2018 and (ii) has at least fifteen (15) Years Of CalPERS Service, the applicable percentage shall be the percentage paid by the Employer for an active Executive Staff Employee (e.g., eighty percent (80%) for 2019).
- C. If the Retiree is a Rank And File Employee, the applicable percentage shall be the percentage paid by the Employer for an active Rank And File Employee (e.g., eighty percent (80%) for 2019).

4.05. Benefits Upon Death.

- A. Benefits under the Plan will be provided to a Participant only until the Participant's death. After the Participant's death, no further benefits will be paid or otherwise provided under the Plan with respect to the Participant or the Participant's Dependents or estate, except as required by law. This provision is not intended to, and does not, abrogate any obligations that the Employer may

have under PEMHCA to provide survivorship benefits to a Participant's Dependent following the death of the Participant, including continued payment of the then current minimum contribution required under California Government Code section 22892(b) on behalf of the Participant's Dependents in the event that the Participant had elected a survivorship benefit under PEMHCA.

- B. In the event that a Retiree dies before becoming a Participant, but after satisfying the eligibility requirements in the Eligibility Requirements section, above, including having a Termination Of Employment other than by reason of the Retiree's death, the Employee shall not be a Retiree, the Employee shall not become a Participant, and no benefits shall be payable under the Plan with respect to the Employee or the Employee's Dependents.
- C. In the event that an Employee's Termination Of Employment results from the Employee's death, the Employee shall not be a Retiree, the Employee shall not become a Participant, and no benefits shall be payable under the Plan with respect to the Employee or the Employee's Dependents.

4.06. Working Retirees.

No reimbursement of premiums shall be paid under this Plan with respect to a Retiree who has once again become an Employee. Such a Retiree's health insurance premium reimbursements from the Plan shall resume upon the Retiree's subsequent Termination Of Employment.

4.07. Distributions To Incapacitated Participants.

If the Administrator determines that a Participant or Dependent who is entitled to a payment under the Plan is incapable of personally receiving the payment, the Administrator may make all benefit distributions to the persons or institutions which are providing for the care and maintenance of the distributee and continue to make distributions to them until a duly appointed legal representative of the distributee makes a claim for the payment. Payments made pursuant to the terms of this Distribution To Incapacitated Participants section shall constitute a distribution to the Participant or Dependent entitled thereto, and shall immediately discharge the Employer, the Administrator, the Plan and all Plan fiduciaries of and from any further liability therefor.

4.08. Repayment Of Overpayment Of Benefits.

- A. By accepting payment of benefits under the Plan, the Participant or Dependent receiving the payment agrees that, in the event of overpayment, the Participant or Dependent will promptly repay the amount of overpayment, without interest, upon notice by the Administrator; provided that, if the Participant or Dependent has not repaid the overpayment within thirty (30) days after notice:
1. The Participant or Dependent will also pay an amount equal to simple interest at the rate of ten percent (10%) per annum (or the highest rate allowable, if less) on the unpaid amount from the date of overpayment to the date of repayment, and, in addition, will pay all legal fees, court costs and the reasonable time value of the Administrator or Employer, or any of their employees or agents, related to the collection of such overpayment; and
 2. The Administrator may deduct all or any portion of the overpayment, with interest, that is not timely repaid, from any amount that would otherwise then be payable or that may become payable, to the Participant or Dependent under the Plan.
- B. In the event that the Plan makes a payment to a Participant, Dependent or third party that is in excess of the amount otherwise due under the Plan, the Plan shall have an equitable lien on the excess portion of such payment, which shall be regarded by the Plan as a distinct and separate fund held by such Participant, Dependent or third party subject to such lien. Such lien shall continue in effect to any account of such Participant, Dependent or third party to which all or any portion of such payment is transferred, and as to any tangible or intangible asset acquired by such Participant, Dependent or third party using all or any portion of such payment.

ARTICLE 5. PLAN ADMINISTRATION

5.01. Employment Records.

The Employer shall maintain access to sufficient employment records to determine benefits under the Plan for each Retiree. The Employer shall make such records available to the Administrator, in a timely manner, and the Employer shall be responsible for the accuracy of such information, upon which the Administrator is entitled to rely.

5.02. Reports And Disclosure.

The Administrator shall prepare, file and distribute, in a timely manner, all reports and information to be disclosed to Participants as may be required by the Code or applicable State law. The Administrator shall prepare such reports from records kept by it and information furnished by the Employer.

5.03. Retention Of Records.

Every person subject to a requirement to file any description or report or to certify any information thereof under applicable law shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained or clarified and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts and applicable resolutions, and shall keep such records available for examination for a period of not less than six (6) years after the filing date of the documents based on the information which they contain.

5.04. Powers And Responsibilities.

- A. The Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan and to assure that the Plan is being operated for the exclusive benefit of the Participants and their Dependents in accordance with the terms of the Plan, the Code and applicable State law.
- B. The Employer shall periodically review the performance of any fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of the Plan, or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate means.

5.05. Designation Of Administrative Authority.

- A. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person appointed by the Employer to serve as the Administrator shall signify such appointee's acceptance by filing written acceptance with the Employer. An Administrator may resign by

delivering a written resignation to the Employer or may be removed by the Employer with or without cause by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified.

- B. The Employer, upon the resignation or removal of an Administrator, shall promptly designate in writing a successor to this position. If the Employer does not appoint a successor Administrator, the Employer's Chief Administrative Officer will function as the Administrator.

5.06. Allocation And Delegation Of Responsibilities.

If more than one person is appointed as the Administrator, the responsibilities of each appointed person may be specified by the Employer and accepted in writing by each Administrator. In the event that the Employer makes no such delegation, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer in writing of such action and specify the responsibilities of each Administrator. Except where there has been an allocation and delegation of administrative authority pursuant to this section, if there shall be more than one Administrator, they shall act by a majority of their number, but may authorize one or more of them to sign all papers on their behalf. The Administrators may act with or without a meeting being called or held and shall keep minutes of all meetings held and a record of all actions taken by written consent. No Administrator may participate in any decision that involves solely the Administrator's interest as a Participant in the Plan.

5.07. Powers And Duties Of The Administrator.

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Dependents, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to interpret and construe the terms of the Plan, to decide any disputes and resolve any ambiguities which may arise relative to the rights of the Employees, past and present, and their Dependents, under the terms of the Plan, and to determine all questions arising in connection with the administration, interpretation and application of the Plan. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan;

provided, however, that any such procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall comply with the terms of the Code and all regulations issued pursuant thereto. The Administrator shall have all powers necessary or appropriate to accomplish its duties under the Plan.

5.08. Administrative Functions.

The Administrator shall:

- A. Determine Participant eligibility;
- B. Determine the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan, inform the Employer of the amount of such benefits, and provide a full and fair review to any claim for benefits which has been denied in whole or in part;
- C. Designate other person(s) to carry out any duty or power which would otherwise be a fiduciary responsibility of the Administrator under the terms of the Plan including but not limited to delegating certain claims administration duties to a claims administrator, provided that any such delegation or allocation of responsibilities shall be set out in a written instrument executed by the Administrator and the designated party;
- D. Process claims and appeals from claims denied; and
- E. Make recommendations to the Employer concerning any phase of Plan management or administration.

5.09. Appointment And Responsibility Of Representatives.

- A. With the consent of the Employer or its designee, the Administrator shall have the right and the power to appoint one or more representatives, accountants, counsel, specialists, and other advisory and clerical persons as it deems necessary or desirable to assist the Administrator in the administration of the Plan. All usual and reasonable expenses of such representatives, accountants, counsel, specialists, and other advisory and clerical persons may be paid in whole by the Plan, in whole by the Employer (if the Employer agrees to do so in advance), or in part by the Plan and in part by the Employer (if the Employer agrees to do so in advance).

- B. The Administrator may designate any person as its agent for any purpose. The designated representative of the Administrator shall be responsible only for those specific powers, duties, responsibilities and obligations specifically given to it by the Administrator. The Administrator, the Employer and any person to whom the Administrator may delegate any duty or power in connection with the Plan's administration may rely upon all tables, valuations, certificates, reports and opinions furnished by any duly appointed actuary, accountant (including employees who are actuaries or accountants), legal counsel, or other specialist, and they shall be fully protected whenever they take action based in good faith in reliance thereon. All actions taken in good faith reliance on advice from the advisors are conclusive upon all persons. Any benefits not paid by the Plan shall not be the responsibility of the designated representatives.

5.10. Appointment Of Fiduciaries And Agents.

The Employer or its designee shall have the right to hire and fire any fiduciary or agent, including the Administrator, or any agent designated pursuant to the Appointment And Responsibility Of Representatives section, above.

5.11. Compensation Of Administrator.

The Administrator(s) shall receive no compensation from the Plan for acting as such, but the Plan shall reimburse the Administrator(s) for all necessary and proper expenses incurred in carrying out its duties under the Plan.

5.12. Use Of Electronic Media.

In accordance with Treasury regulations, the Administrator and the Trustee may use telephonic or electronic media to satisfy the notice requirements under this Plan.

5.13. HIPAA Privacy, Security And Transaction Standards.

Inasmuch as (i) certain members of the Employer's workforce may have access to protected health information (PHI) and electronic PHI, as defined in HIPAA and its implementing regulations (HIPAA Rules), for administrative functions of the Plan, and (ii) HIPAA and its implementing regulations require that the group health plan be amended to incorporate certain provisions and that the group health plan sponsor agree to such provisions in order for a group health plan's sponsor to

have access to PHI from the group health plan, the Employer and the Plan shall comply with the applicable privacy, security and administration regulations promulgated under HIPAA, as they may be in effect from time to time. In addition, the following provisions shall govern the use and disclosure of PHI by the Plan to the Employer by a group health plan benefit provided under the Plan (to the extent not inconsistent with such regulations):

A. Hybrid Entity Designations.

If the Plan is a hybrid entity as defined in the HIPAA Rules, then:

1. The Employer designates that the health care components of the Plan are the group health plan benefits provided under the Plan, if any, whether fully insured, self-insured, or a combination, and the administration functions of the Plan that relate to such benefits.
2. The Employer designates that the other components of the Plan are not health care components of the Plan.
3. The other components of the Plan that are not health care components shall be treated as if they were a separate legal entity from the health care components of the Plan for purposes of the following provisions.

B. Permitted Disclosure Of Enrollment/Disenrollment Information.

The Plan (or a health insurance issuer or HMO with respect to the Plan) may disclose to the Employer information on whether the individual is participating in the Plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the Plan.

C. Permitted Uses And Disclosure Of Summary Health Information.

The Plan (or a health insurance issuer or HMO with respect to the Plan) may disclose summary health information, as defined in the HIPAA Rules, to the Employer, provided the Employer requests the summary health information for the purpose of obtaining premium bids from health plans for providing health insurance coverage under the Plan or modifying, amending, or terminating the Plan.

D. Uses And Disclosure For Plan Administrative Purposes.

Unless otherwise permitted by law, and subject to the conditions of disclosure described in the Conditions Of Disclosure For Plan Administration Purposes subsection, below, and obtaining written certification pursuant to the Certification Of Employer subsection, below, the Plan (or a health insurance issuer or HMO on behalf of the Plan) may disclose PHI to the Employer; provided, however, that the Employer may use or disclose such PHI for Plan administration purposes only.

1. "Plan administration purposes" means administration functions performed by the Employer on behalf of the Plan, such as quality assurance, claims processing, auditing, and monitoring.
2. Plan administration functions do not include functions performed by the Employer in connection with any other benefit or benefit plan of the Employer, and they do not include any employment-related functions.

Notwithstanding the provisions of the Plan to the contrary, in no event shall the Employer be permitted to use or disclose PHI in a manner that is inconsistent with section 164.504(f) of the HIPAA Rules.

E. Conditions Of Disclosure For Plan Administration Purposes.

The Employer agrees that, with respect to any PHI (other than enrollment/disenrollment information and summary health information, that are not subject to these restrictions) disclosed to it by the Plan (or a health insurance issuer or HMO on behalf of the Plan), the Employer shall:

1. Not use or further disclose the PHI other than as permitted or required by the Plan or as required by law;
2. Ensure that any agent, including a subcontractor, to whom it provides PHI received from the Plan agrees to the same restrictions and conditions that apply to the Employer with respect to PHI;
3. Not use or disclose the PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer;

4. Report to the Plan any use or disclosure of the information that is inconsistent with the uses or disclosures provided for of which it becomes aware;
5. Make available PHI to comply with HIPAA's right to access in accordance with section 164.524 of the HIPAA Rules;
6. Make available PHI for amendment and incorporate any amendments to PHI in accordance with section 164.526 of the HIPAA Rules;
7. Make available the information required to provide an accounting of disclosures in accordance with section 164.528 of the HIPAA Rules;
8. Make its internal practices, books and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of Health and Human Services for purposes of determining compliance by the Plan with HIPAA's privacy requirements;
9. If feasible, return or destroy all PHI received from the Plan that the Employer still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and
10. Ensure that the adequate separation between the Plan and the Employer (i.e., the "firewall") required by section 164.504(f)(2)(iii) of the HIPAA Rules is satisfied.

F. Conditions Of Disclosure Of Electronic PHI To The Employer.

The Employer further agrees that if it creates, receives, maintains, or transmits any electronic PHI (other than enrollment or disenrollment information, summary health information, and information disclosed pursuant to a signed authorization that complies with section 164.508 of the HIPAA Rules, that are not subject to these restrictions) on behalf of the Plan, the Employer shall:

1. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the

confidentiality, integrity, and availability of the electronic PHI;

2. Ensure that the adequate separation between the Plan and the Employer (i.e., the "firewall") required by section 164.504(f)(2)(iii) of the HIPAA Rules is supported by reasonable and appropriate security measures;
3. Ensure that any agents (including subcontractors) to whom the Employer provides such electronic PHI agree to implement reasonable and appropriate security measures to protect the information; and
4. Report to the Plan any electronic PHI security incident of which it becomes aware.

G. Adequate Separation Between The Plan And The Employer.

The Employer shall allow only those employees of the Employer who are responsible for the Plan's administration functions to have access to the PHI. No other employees of the Employer shall have access to PHI. These employees shall have access to and use PHI only to the extent necessary to perform the plan administration functions that the Employer performs for the Plan. In the event that any of these specified employees do not comply with the provisions of this provision, such employee(s) shall be subject to disciplinary action by the Employer for noncompliance pursuant to the Employer's employee discipline and termination of employment procedures. The Employer shall ensure that the preceding provisions are supported by reasonable and appropriate security measures to the extent that such employees have access to electronic PHI.

H. Certification Of The Employer.

The Plan (or a health insurance issuer or HMO with respect to the Plan) shall disclose PHI to the Employer only upon the receipt of a certification by the Employer that the Plan has been amended to incorporate the provisions required by section 164.504(f)(2)(ii) of the HIPAA Rules and that the Employer agrees to the conditions of disclosure set forth in the Conditions Of Disclosure For Plan Administration Purposes subsection, above.

I. Genetic Information.

The Plan shall comply with the requirements of the Genetic Information Nondiscrimination Act Of 2008 (GINA) to the extent required by the provisions of GINA and the regulations thereunder, effective as of May 21, 2009, or such later date as may be provided under the regulations under GINA.

ARTICLE 6. CLAIMS PROCEDURES

6.01. Request For Information.

Any Participant or Dependent may request such information concerning the Participant's or Dependent's rights or benefits under the Plan as would be required to be disclosed under part 1, title I of ERISA if it applied to the Plan. The Administrator shall respond, in writing, within a reasonable time, not to exceed thirty (30) days, unless the failure to respond results from matters reasonably beyond the Administrator's control.

6.02. Claims For Benefits.

In order to receive benefits under the Plan, the Participant must submit satisfactory proof of entitlement to such a benefit as set forth in this Claims Procedures article.

6.03. Filing Claims.

- A. Any Participant, Dependent, or duly authorized representative of a Participant or Dependent (Claimant) may file a claim for benefits to which such Claimant believes he or she is entitled. Claims must be made in writing and shall be delivered to the Administrator or a service provider designated by the Administrator. Claimants shall provide the Administrator with such information and evidence, and shall sign such documents, as may reasonably be requested from time to time for the purpose of administration of the Plan.
- B. Unless otherwise announced by the Administrator, a claim for benefits incurred during a Plan Year must be made no later than ninety (90) days after the end of such Plan Year. Any delinquent claims will not be paid.

6.04. Initial Determination Of Claim.

- A. The Administrator shall have full discretion to grant or deny a claim in whole or in part.
- B. The Administrator will notify the Claimant, in writing, of the granting or denying, in whole or in part, of such claim, within thirty (30) days after receipt of such claim; provided, however, that if the Administrator determines that an extension of time for processing the claim is necessary due to matters beyond the control of the Administrator, this period may be extended no more than fifteen (15) days from the end of the initial thirty (30) day period.
- C. If an extension of time is necessary, the Claimant must be given a written notice to this effect prior to the expiration of the initial thirty (30) day period and the notice must indicate the special circumstances requiring the extension and the date by which a decision will be made. If such an extension is necessary due to a failure of the Claimant to submit the information necessary to decide the claim, the notice shall specifically describe the required information and the Claimant shall submit the specified information no later than forty-five (45) days from receipt of the notice by the Claimant.
- D. If a claim is denied in whole or in part, the Administrator's notice denying such claim shall set forth, in a manner calculated to be understood by the Claimant, the following:
 - 1. The specific reason or reasons for the denial;
 - 2. Specific reference 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 information is necessary; and
 - 4. An explanation of the Plan's claim review procedures.
- E. If notice of the granting or denying of a claim is not furnished in accordance with the preceding provisions, the claim shall be deemed denied and the Claimant shall be permitted to exercise the Claimant's right to review pursuant to the Claims Appeals section, below.

6.05. Claims Appeals.

If a claim for benefits is fully or partially denied, the following appeal procedures shall apply:

- A. If a Claimant wishes to appeal a denial of a claim, the Claimant or the Claimant's duly authorized representative:
 - 1. May request a review upon written application to the Administrator;
 - 2. May submit written comments, documents, records, and other information relating to the claim; and
 - 3. May obtain, upon request and free of charge reasonable access to, and copies of, all documents, records, and other information relevant (determined in accordance with Department of Labor regulations section 2560.503-1(m)(8)) to the Claimant's claim for benefits.
- B. The written request for review must be received by the Administrator within one hundred eighty (180) days after the Claimant receives notice that the Claimant's claim for Plan benefits has been denied.
- C. The decision on the review shall be made by the Administrator, who may, in its discretion, hold a hearing on the denied claim; provided, however, that the following requirements shall apply:
 - 1. The review of the denied claim shall not afford deference to the initial claim denial and shall be conducted by an appropriate named fiduciary who is neither the individual who made the adverse benefit determination that is the subject of the review nor the subordinate of such individual;
 - 2. If the adverse benefit determination that is the subject of the review was based in whole or in part on a medical judgment, the appropriate named fiduciary of the Plan shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment, and who shall not be the individual who was consulted in connection with the

adverse benefit determination that is the subject of the review, nor the subordinate of such individual.

3. Any medical or vocational experts whose advice was obtained on behalf of the Plan in connection with a Claimant's adverse benefit determination shall be identified without regard to whether the advice was relied upon in making the benefit determination.
- D. The Administrator shall make its decision promptly, and not later than sixty (60) days after the Administrator's receipt of the request for a review; provided, however that if the Administrator determines that an extension of time for processing the claim is necessary due to matters beyond the control of the Administrator, this period may be extended no more than sixty (60) days from the end of the initial sixty (60) day period. If an extension of time is necessary, the Claimant must be given a written notice to this effect prior to the expiration of the initial sixty (60) day period and the notice must indicate the special circumstances requiring the extension and the date by which a decision will be made on review.
- E. The decision on review must be written in a manner calculated to be understood by the Claimant. In the case of an adverse benefit determination, the notification to the Claimant shall set forth, in a manner calculated to be understood by the Claimant, the following:
1. The specific reason or reasons for the denial;
 2. Specific reference to pertinent Plan provisions on which the denial is based; and
 3. A statement that the Claimant is entitled to receive, upon request and free of charge reasonable access to, and copies of, all documents, records, and other information relevant (determined in accordance with Department of Labor regulations section 2560.503-1(m)(8)) to the Claimant's claim for benefits.
- F. If the decision on review is not furnished to the Claimant within the time required in this section, the claim shall be deemed denied on review and the Claimant shall be permitted to exercise the Claimant's right to legal remedy pursuant to the remaining sections of this Claims Procedures article.

6.06. Legal Actions.

- A. A Claimant must submit a written claim and exhaust the preceding claims procedures before legal recourse of any type is sought. Except as explicitly permitted by statute, the Administrator and the Employer are the only necessary parties to any action or proceeding that involves the Plan or the administration of the Plan. No Employees or former Employees or their dependents or beneficiaries or any person having or claiming to have an interest under the Plan is entitled to notice of process. Any final judgment that is not appealable for any reason (including the passage of time) and that is entered in an action or proceeding involving the Plan is binding and conclusive on the parties to the Plan and all persons having or claiming to have any interest under the Plan.
- B. Judicial review of a Claimant's denied claim shall be limited to a determination of whether there was an abuse of discretion. No legal action may be commenced by a Claimant more than three (3) years after the final decision denying the claim.

6.07. Administration Pending Resolution Of Disputes.

If a dispute arises with respect to any matter under the Plan, the Administrator may refrain from taking any other or further action in connection with the matter involved in the controversy until the dispute has been resolved under the Plan. If a dispute arises as to the proper amount or recipient of any payment of benefits, the Administrator, in the Administrator's sole and absolute discretion, may withhold or cause to be withheld such payment until the dispute has been settled by the parties concerned, or the Administrator may deposit such funds or property with the court in an interpleader action brought under the law of the State having jurisdiction.

6.08. Time.

The filing of claims or receipt of notices of rulings and any event starting a time period shall be deemed to commence with personal delivery signed for by the Claimant or by affidavit of personal service, or the date of actual receipt of certified mail or date returned if delivery is refused or a Claimant has moved without giving the Administrator a forwarding address.

ARTICLE 7. AMENDMENTS AND TERMINATION

7.01. No Vested Rights.

No Participant shall have any vested right to any benefits provided under the Plan.

7.02. Amendments.

- A. The Employer reserves the right to amend the Plan at any time, in its sole and absolute discretion, even after the Participant has performed the services required to earn a benefit under this Plan, without the consent of the Administrator, any fiduciary, or any Participant or Dependent; provided, however, that, except in accordance with the provisions of the Plan, or as otherwise specifically permitted by law, no such amendment shall affect any right to claim reimbursement of benefits incurred prior to the adoption date of such amendment. The Employer may make any amendment that it determines to be necessary or desirable, with or without retroactive effect, to comply with the law.
- B. Any such Plan amendment shall be made by means of a written instrument identified as an amendment of the Plan effective as of a specified date.
- C. Notwithstanding any other provision of the Plan to the contrary, if there is a scrivener's error in properly transcribing the provisions of the Plan, it shall not be a violation of the Plan terms to operate the Plan in accordance with its proper provisions, rather than in accordance with the term of the Plan, pending correction of the Plan through amendment. In addition, any provisions of the Plan improperly added as a result of scrivener's error shall be considered null and void as of the date such error occurred.

7.03. Plan Termination.

The Employer reserves the right to terminate the Plan in part or in whole at any time, in its sole and absolute discretion, by appropriate action; provided, however, that such termination shall not affect any right to claim reimbursement of benefits incurred prior to such termination. In the event of the dissolution, merger, consolidation or reorganization of the Employer, the Plan shall terminate unless the Plan is continued by a successor to the Employer.

ARTICLE 8. MISCELLANEOUS

8.01. Nonalienation Of Benefits.

- A. Subject to the exceptions provided below and as otherwise specifically permitted by law, no assets or benefits under the Plan shall 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, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the Participant, prior to actually being received by the person entitled to the benefit under the terms of the Plan. Any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy shall be void. Nor shall any such benefits in any manner be liable for, or subject to, the debts, contracts, liabilities, or torts of any person entitled to such benefits.
- B. The prohibitions contained in this Nonalienation Of Benefits section shall not apply to the extent a Participant or Dependent is indebted to the Plan, for any reason, under any provision of the Plan. At the time a distribution is to be made to or for a Participant's or Dependent's benefit, such proportion of the amount distributed as shall equal such indebtedness shall be retained by the Plan to apply against or discharge such indebtedness. Prior to such application, however, the Administrator must give written notice to the Participant or Dependent that such indebtedness is to be so paid in whole or part from the Participant's benefit. If the Participant or Dependent does not agree that the indebtedness is a valid claim against the Participant's benefit, the Participant or Dependent shall be entitled to a review of the validity of the claim in accordance with procedures provided in the Claims Procedures article.

8.02. Limitation Of Rights; Employment Relationship.

Nothing contained in the Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of any Employee to be continued in the employment of the Employer, or as creating or modifying the terms of an Employee's employment, or as a limitation on the right of the Employer to discharge any Employee, with or without cause. Unless the law or the Plan explicitly provides otherwise, rights under any other employee benefit plan maintained by the Employer (for example, benefits upon an Employee's death, retirement, or other termination) do not create any rights under the Plan

to benefits or continued participation. The fact that an individual is eligible to receive benefits under the Plan does not create any rights under any other employee benefit plan maintained by any Employer, unless that plan or the law explicitly provides otherwise.

8.03. Limitation Of Rights Of Participants And Others.

Neither the establishment of the Plan, nor any modifications thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or any other person any legal or equitable right against the Employer, the Administrator, or its designated representative, except as expressly provided herein or as provided by law.

8.04. Release From Liability.

Any payment to any Participant, or to the Participant's legal representative or Dependent, in accordance with the provisions of the Plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the Plan, the Employer, the Administrator, and any Plan fiduciary, any of whom may require such Participant, legal representative or Dependent, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the Employer, the Administrator, or any Plan fiduciary, as the case may be.

8.05. Indemnity.

The Employer hereby agrees to indemnify and hold harmless each present and future Administrator and its employees, and all duly authorized agents, against all liabilities, costs and expenses, including, without limitation, attorneys' fees reasonably incurred by, or imposed upon, such person in connection with, or arising out of, any claims, demands, suits, actions or proceedings in which such indemnified party may be involved, except in the case of the willful misconduct of any such indemnified party. Expenses shall include the cost of reasonable settlement made with the view to curtailment of costs of litigation. The foregoing right of indemnification shall not be exclusive of other rights to which such indemnified party may be entitled as a matter of law.

8.06. Expenses.

Upon written instructions from the Administrator, the Plan shall pay the expenses necessary to carry out the administration of the Plan that are not paid by the Employer.

8.07. Insurers Not A Party.

No insurer shall be considered a party to the Plan, nor to any future amendment to the Plan. The rights and obligations of any insurer are those specified in the insurance contract and no provisions of any portion of the Plan shall be deemed to alter or change the terms of such insurance contract.

8.08. State Laws.

The Plan is designed to be consistent with applicable State laws, to the extent that they are not preempted by any applicable federal law.

8.09. Construction.

No provision of the Plan shall be construed to conflict with any Treasury Department, Department of Labor or Internal Revenue Service regulation, ruling, release or proposed regulation or other order which affects, or could affect, the terms of the Plan. If any provision is susceptible of more than one interpretation, such interpretation shall be given thereto as is consistent with the Plan being in conformity with the Code and administered in conformity with all federal and State laws that apply to the Plan.

8.10. Headings.

The headings and subheadings of the Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

8.11. Uniformity.

All provisions of the Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

8.12. Gender And Number.

Any reference in the masculine gender herein shall be deemed to also include the feminine gender, unless expressly provided otherwise. Wherever appropriate, any reference in this document in the singular shall include the plural and any reference in the plural shall include the singular.

8.13. Controlling Law.

Unless otherwise provided in the Plan, the Plan shall be construed and enforced according to the laws of the United States of America to the extent applicable, otherwise by the laws of California including California's choice-of-law rules, except to the extent those laws would require application of a State other than California.

8.14. Severability.

In the event that any provisions of this document shall be held illegal or invalid for any reason by operation of law or a court of competent jurisdiction, said illegality or invalidity shall not affect the remaining legal and valid provisions of this document. This document shall continue as if said illegal or invalid provisions had not been included herein either initially, or beyond the date it is first held to be illegal or invalid; provided the basic purposes hereof can be effected through the remaining valid and legal provisions.

8.15. Waiver.

Failure to insist upon strict compliance with any provision of the Plan shall not be deemed to be a waiver of such provision or any other provision; waiver of breach of any provision of the Plan shall not be deemed to be a waiver of any other provision or subsequent breach of such provision. No term, condition, or provision of the Plan shall be deemed waived unless the purported waiver is in a writing signed by the party to be charged. No written waiver shall be deemed a continuing waiver unless so specifically stated in the writing, and such waiver shall operate only as to the specific term, condition, or provision waived.

8.16. Entire Document.

This document and any documents incorporated herein by reference, exhibits, appendices or supplements hereto shall constitute the entire document and shall govern the rights, liabilities and obligations of the parties under the Plan, except as it may be modified by a duly authorized and adopted amendment. No statements contained in any other writing or communication, including, but not limited to, a summary plan description or a summary of material modifications, shall constitute the terms of the Plan.

Executed this _____ day of _____, 20__.

State Bar Of California

By: _____

Name: _____

Title: _____