

QUALIFIED PLAN AMENDMENT FOR HARDSHIP DISTRIBUTIONS

DEFINED CONTRIBUTION PLAN DOCUMENT #02 (PPA) and #01 (3rd Cycle Restatement)

The following information pertains to both the Prototype Plan under the Pension Protection Act (PPA) that was applicable at the time of the Hardship Distribution Amendments, and the Pre-Approved Plan under the 3rd Cycle Restatement (3rd CR) that must be adopted by July 31, 2022.

(Note: No signatures are required unless noted below. The Pre-Approved Plan Sponsor adopted these Amendments on the date indicated in the Amendment Adoption section below.)

PLAN ADDENDUM FOR HARDSHIP DISTRIBUTION AMENDMENTS

SECTION 1

PREAMBLE - AMENDMENT OF THE PLAN FOR HARDSHIP DISTRIBUTIONS

- 1.01 **Adoption and Effective Date of Amendment:** This Amendment of the Plan is adopted to reflect certain provisions in Final Treasury Regulations issued September 23, 2019 under sections 401(k) and 401(m) relating to Hardship distributions. This Amendment is intended as good faith compliance with the requirements of the Treasury Regulations and is to be construed in accordance with the Treasury and guidance issued thereunder. This Amendment shall be effective as of the date specified in the Employer's hardship policy.
- 1.02 **Supersession of Inconsistent Provisions:** This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.03 **Adoption by the Mass Submitter.** Pursuant to the provisions of the Plan and section 5.01 of Revenue Procedure 2016-37, the Mass Submitter hereby adopts this Amendment on behalf of all adopting Employers.
- 1.04 **Effective Date of the Amendment:** The Mass Submitter has adopted this amendment on behalf of all Pre-Approved Plan Sponsors and adopting Employers to be effective on the date of the intended provision as described in the Employer's hardship policy. No further action is required by the adopting Employer with respect to the Plan document.
- 1.05 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.06 **Employer's Hardship Policy.** Notwithstanding the amendments to the Plan document that are outlined in this amendment, the Employer's hardship policy must describe the Employee's method of (a) representation on availability of cash and other liquid assets; (b) whether Hardship source documentation will be received by the Plan Administrator or summary of source documents is received from the Employee but documents maintained by the Employee; and (c) any optional provisions such as requiring a Participant Loan prior to a Hardship distribution.

SECTION 2

PLAN AMENDMENTS

- 2.01 **Section 10.04 of Plan #02 (PPA) and Plan #01 (3rd CR).** Section 10.04(d) in each aforementioned Plan has been amended to insert a new paragraph (7) after Section 10.04(d)(6) and shall read as follows:

(7) Expenses and losses (including loss of income) incurred by the employee on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert

T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-707, provided that the employee's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster.

2.02 **Section 10.04 of Plan #01 (3rd CR).** The Note after Section 10.04(f) has been amended and shall read as follows:

Note: Elective Deferrals, Qualified Nonelective Contributions, and Qualified Matching Contributions, and income allocable to each, are not permitted to be part of an in-service distribution unless the participant has attained age 59 ½ or there is a hardship.

2.03 **Section 14.84 of Plan #01 (3rd CR).** Section 14.84 has been amended and shall read as follows:

Qualified Matching Contributions: Matching Contributions that are nonforfeitable when made to the Plan and that are distributable only in accordance with the distribution provisions applicable to Elective Deferrals. The term Qualified Matching Contributions shall also include Matching Contributions which the Employer redesignates as Qualified Matching Contributions.

Sections 2.04 through 2.11 below provide amendments to certain sections of the Plan that reference the 6-month suspension of all employee contributions, including Elective Deferrals and After-tax Contributions, to all Employer Plans after having elected to take a hardship distribution described in Section 15.21 of Plan #02 (PPA) and Section 15.19 of Plan #01 (3rd CR). If a Participant received a distribution under this provision prior to 1/1/2020, the Participant's Elective Deferrals (and Employee Contributions) may be suspended for 6 months after receipt of the distribution, if required by the Employer. After 12/31/2019, the 6-month suspension no longer applies. In addition, certain sections, where noted, have been amended to remove the mandate that loans must be taken prior to a hardship distribution.

2.04 **Section 15.19 of Plan #02 (PPA) and Section 15.17 of Plan #01 (3rd CR).** Section 15.19(e) of Plan #02 (PPA) and Section 15.17(h) of Plan #01 (3rd CR) have been amended and shall read as follows:

The participant's service in the uniformed services while on active duty for a period of at least 30 days. If a participant received a distribution under this provision prior to 1/1/2020, the participant's Elective Deferrals (and Employee Contributions) may be suspended for 6 months after receipt of the distribution. After 12/31/2019, the 6-month suspension no longer applies.

2.05 **Section 15.21 of Plan #02 (PPA) and Section 15.19 of Plan #01 (3rd CR).** Section 15.21(a) of Plan #02 (PPA) and Section 15.19(a) of Plan #01 (3rd CR) have been amended and shall read as follows:

(a) Distribution of Elective Deferrals (and any earnings credited to a Participant's account as of the later of December 31, 1988, and the end of the last Plan Year ending before July 1, 1989) may be made to a Participant in the event of hardship. After 12/31/18 or later, the distribution of Qualified Matching Contributions, Qualified Nonelective Contributions, and 401(k)(12) Safe Harbor Contributions, and the earnings attributable to those contributions, may be made to a Participant in the event of hardship as outlined in the Employer's hardship policy. For the purposes of this Section, hardship distributions will only be made in accordance with objective standards, set forth in Section 15.19(b) of the Plan, giving the criteria of for determining whether the Participant has an immediate and heavy financial need where such Participant lacks other available resources. Hardship distributions are subject to the spousal consent requirements contained in sections 411(a)(11) and 417 of the Code.

2.06 **Section 15.21 of Plan #02 (PPA) and Section 15.19 of Plan #01 (3rd CR).** Section 15.21(b) of Plan #02 (PPA) and Section 15.19(b) of Plan #01 (3rd CR) have been amended to insert a new section (7) and shall read as follows:

- (7) Expenses and losses (including loss of income) incurred by the employee on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-707, provided that the employee's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster.

2.07 **Section 15.21 of Plan #02 (PPA) and Section 15.19 of Plan #01 (3rd CR).** Section 15.21(c)(1) of Plan #02 (PPA) and Section 15.19(c)(1) of Plan #01 (3rd CR) have been amended to remove the mandate that loans must be taken prior to a Hardship distribution. The effective date of this section is for loans acquired after 12/31/2019. The Employer may continue to require loans pursuant to Sections 15.21 and 15.19 of the aforementioned Plans, if such requirement is outlined in the Employer's hardship policy.

Sections 15.21(c) and 15.19(c) of the aforementioned Plans have been further amended to delete Subsections (2) and (4), as they no longer apply. Therefore, Subsection (c) of each of these Sections has been renumbered accordingly, and shall read as follows:

(c) A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the Employee only if:

- (1) If required by Treasury regulations, the Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans, if required by the Employer, under all plans maintained by the Employer (except to the extent such actions would be counterproductive to alleviating the financial need); and

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

2.08 **Section 16.02 of Plan #02 (PPA) and Plan #01 (3rd CR).** Section 16.02(f) of each aforementioned Plan has been amended and shall read as follows:

(f) "Eligible Employee" means an employee eligible to make Elective Deferrals under the Plan for any part of the Plan Year or who would be eligible to make Elective Deferrals but for statutory limitations, such as §§ 402(g) and 415 of the Code.

2.09 **Section 16.03 of Plan #02 (PPA) and Plan #01 (3rd CR).** Section 16.03(a)(3) of each aforementioned Plan has been amended and shall read as follows:

- (3) The Participant's accrued benefit derived from ADP Test Safe Harbor Contributions is nonforfeitable and is subject to the same distribution restrictions as apply to Elective Deferrals. In addition, such contributions must satisfy the ADP Test Safe Harbor without regard to permitted disparity under § 401(l).

2.10 **Section 17.03 of Plan #02 (PPA) and Plan #01 (3rd CR).** Section 17.03(b) of each aforementioned Plan has been amended and shall read as follows:

(b) Default Elective Deferrals will be reduced or stopped to meet the limitations under Code §§ 401(a)(17), 402(g), and 415.

2.11 **Section 17.09 of Plan #02 (PPA) and Plan #01 (3rd CR).** Section 17.09(b) of each aforementioned Plan has been amended and shall read as follows:

- (b) Default Elective Deferrals will be reduced or stopped to meet the limitations under Code §§ 401(a)(17), 402(g), and 415.

AMENDMENT ADOPTION

The Mass Submitter has adopted this amendment on behalf of all adopting Employers on May 28, 2021, to be effective for Plan Years beginning on or after January 1, 2020, unless otherwise noted above. No further action is required by the adopting Employer with respect to the Plan document. Earlier effective dates may be applied to certain provisions if described and noted in the Employer's hardship policy.

INSTRUCTIONS TO EMPLOYERS

The enclosed amendment updates certain sections of your Plan document to reflect changes that were made under the Bipartisan Budget Act of 2018, the Final 401(k) Regulations in September of 2019 and Revenue Procedure 2020-9 issued December 12, 2019, which reflects the deadline to amend Plan documents for the new Hardship Distribution rules.

The deadline to amend Plans is December 31, 2021. The attached amendment meets this requirement. Keep this with your Plan documents file for future reference.

Some of the changes are mandatory, such as the 6-month suspension rule, which must be removed from hardship policies no later than 12/31/2019; some are optional, such as requiring a loan be taken first before a hardship is requested. All optional items should be highlighted in the Employer's hardship policy.

Attached is a chart outlining the various provisions, whether they are mandatory or optional, and the date that they can be or must be applied to the Employer's hardship policy.

The update to the Employer's hardship policy may be provided by the plan's administrator or TPA, and all annuity contracts and custodial agreements must be updated as well.