

**B&W PANTEX  
401(K) PLAN FOR BARGAINING EMPLOYEES**

**Summary Plan Description**

**January 1, 2014**

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## INTRODUCTION TO THE PLAN

This Summary Plan Description (“SPD”) summarizes the key features of the B&W Pantex 401(k) Plan for Bargaining Employees (“Plan”), and your rights, obligations and benefits under the Plan. The provisions in this SPD apply to Eligible Employees who are actively employed by the Employer on or after January 1, 2014. The rights and benefits, if any, of an employee who terminated prior to January 1, 2014 shall be determined in accordance with the provisions of the Plan as in effect on the date employment terminated.

This Plan is a defined contribution plan. It offers you a built in savings system through payroll deductions. It also offers attractive tax advantages, the freedom to choose investments according to your needs and the flexibility to change your investments as your needs change. Although it is hoped and intended that your account value will reflect all contributions plus future earnings, there is no guarantee of the success of the investments.

Under the terms of this Plan, you may choose to defer a portion of your current salary, which your Employer then contributes to the Plan on a pre-tax basis. Contributions are not subject to Federal income tax, and in most cases are not subject to state or local income taxes. Because your contributions are not subject to Federal income tax, your taxable income is reduced. In addition to your own current deferrals, if your Employer allows, you may make rollover contributions to this Plan of eligible rollover amounts that you receive from certain other qualified retirement plans.

Effective as of October 3, 2011, you may also make after –tax Roth 401(k) contributions to the Plan. Roth 401(k) contributions will be treated as Elective Contributions for all purposes under the Plan.

The laws governing plans like this one contain many provisions that may affect your retirement. You should contact the Plan Administrator with any questions about the Plan before you make any decisions related to your retirement. For specific tax advice, you should contact your tax advisor.

Every effort has been made to make this description as accurate as possible. However, this booklet is not a Plan document. This SPD is not meant to interpret, extend, or change the provisions of the Plan in any way. The terms of the Plan are stated in, and will be governed in every respect by, the Plan document. Your right to any benefit depends on the actual facts and the terms and conditions of the Plan document, and no rights accrue by reason of any statement in this summary. You, your beneficiaries, or your legal representatives may request to inspect the Plan document at any reasonable time. You also have a right to a copy of the Plan document. A copy of the Plan document is available from Babcock & Wilcox Technical Services Pantex, LLC, known as B&W Pantex (“Employer” or “Company”). For an explanation of your rights under federal law (“ERISA”), please refer to the “Statement of ERISA Rights” section in this SPD.

Nothing contained in this SPD creates or is intended to create a contract of employment between any employee and the Company. Nothing in the Plan or this SPD gives any person the right to be employed by the company nor does it interfere with the company’s right to discharge an employee at any time. Generally, the terms and phrases that are capitalized in this SPD are defined in the Plan document.

## GENERAL INFORMATION ABOUT THE PLAN

**Plan Name:** B&W Pantex 401(k) Plan for Bargaining Employees

**Employer/Plan Sponsor:** Babcock & Wilcox Technical Services Pantex, LLC  
P.O. Box 30020  
Amarillo, Texas 79120-0020

**Plan Administrator:** B&W Pantex Investment Committee  
Babcock & Wilcox Technical Services Pantex, LLC  
Attn: Benefits Department  
P.O. Box 30020  
Amarillo, Texas 79120-0020  
(806) 477-3000

**Third Party Administrator:** Fidelity  
[www.401k.com](http://www.401k.com)  
(800) 835-5095

**Employer's Tax ID Number:** 62-1813174

**Plan Trustee:** Fidelity Management Trust Company  
82 Devonshire Street  
Boston, Massachusetts 02109

**Plan Number:** 012

**Plan Restatement Date:** January 1, 2010

**Plan Effective Date:** February 1, 2001, as amended and restated January 1, 2010

**Employer Tax Year End:** September 30

**Plan Year End:** December 31

**Type of Plan:** Defined Contribution – 401(k) Plan

The trust established for the Plan is the funding medium used for accumulation of assets and from which benefits will be distributed. The Plan Administrator keeps the records for the Plan and is responsible for the interpretation and administration of the Plan. All Plan records will be kept on the basis of the Plan Year. If you have questions about the Plan you should contact the Plan Administrator. The Plan Administrator is designated as the Agent for Service of Legal Process.

## **ELIGIBILITY AND PARTICIPATION**

### **Eligibility:**

All employees of the Employer who are employed at the Employer's Amarillo, Texas Pantex Facility and who are members of either (a) The Metal Trades Council of Amarillo, Texas and Vicinity, A.F.L.-C.I.O. collective bargaining unit or (b) the Pantex Guards Union collective bargaining unit are eligible to participate in this Plan, except (i) Leased Employees (defined below) or (ii) employees or independent contractors who are (1) members of the West Texas Building Trades Council Union, (2) cooperative education students or (3) interns.

A Leased Employee is generally any person (other than a common law employee of an Employer) who under an agreement between an Employer (or an Affiliate) and a leasing organization has performed services for the Employer (or an Affiliate) on a substantially full-time basis. Such services must be performed under the primary direction or control of the Employer (or an Affiliate).

In all events, individuals who are not treated as common law employees by the Employer on its payroll records (independent contractors) are excluded from Plan participation, even if a court or administrative agency later determines that these individuals are common law employees and not independent contractors.

If you are not excluded from participation due to the requirements listed above, you are considered to be an Eligible Employee for the Plan.

### **Participating Employers:**

Babcock & Wilcox Technical Services Pantex, LLC (known as B&W Pantex)  
P.O. Box 30020  
Amarillo, Texas 79120-0020

### **Plan Participation Requirements:**

If you are not excluded from participation due to the above Eligible Employee requirements, you will become eligible to participate upon your commencement of employment.

### **Break in Service/Eligibility:**

If you are reemployed after a Break in Service, you will resume participation in the Plan immediately upon your return and your Elective Contributions will commence for the first pay period beginning after you file a deferral election and an investment election with the Third Party Administrator. If you do not file an election form and you are a member of the Pantex Guard Union collective bargaining unit, you will be automatically enrolled in the Plan on the 30<sup>th</sup> day following your date of re-hire with an Elective Contribution of 3% of Compensation.

A Break in Service refers to the period beginning on the employee's Severance date and ending on the date the employee next completes an Hour of Service. An employee's Severance Date is generally the earlier of (1) the date on which the employee quits, retires, is discharged, or dies, or (2) the first anniversary of the first date of a period in which the employee remains absent from work (with or without pay), for any reason (other than resignation, retirement, discharge or death), such as vacation, holiday, sickness, disability, leave of absence, or layoff. Notwithstanding the

above, if an employee is absent from work for more than twelve months because of the employee's pregnancy, the birth of a child of the employee, the adoption of a child by the employee or for purposes of caring for such a child immediately following the birth or adoption, the employee's Severance Date is the second anniversary of such absence.

Solely for purposes of preventing a Break in Service, employees will be credited with Service for any period during which the employee is on an unpaid leave of absence that is required to be provided pursuant to the Family Medical Leave Act of 1993. In addition, if you are covered by qualifying military service, you will be credited with Service for your period of military service to the extent required by federal law.

### **Compensation:**

Compensation means the total salary or wages paid to you for purposes of computing federal wage withholding, including overtime and bonuses up to a maximum of \$260,000 for 2014. This amount will be periodically adjusted for cost of living by the IRS. Compensation includes differential wage payments to active duty members of the uniformed services. Compensation does not include reimbursements or other expense allowances, fringe benefits, moving expenses, deferred compensation, or welfare benefits. Compensation also does not include bonuses paid in connection with the ratification of a collective bargaining agreement.

Compensation is generally determined before any amounts are deducted from your pay on a pre-tax basis, such as pre-tax deferrals or cafeteria plan deductions. For example, if you otherwise earn \$30,000 and reduce your pay by \$2,000 for medical premiums through a cafeteria plan, your pay will still be treated as earning \$30,000 for determining the percentage of your Compensation that may be contributed to this Plan. If you elect to defer 5% of your Compensation as a pre-tax deferral, you will defer \$1,500 (5% of \$30,000).

For the first year you participate in the Plan, only Compensation earned after your Entry Date will be used to determine your Elective Contributions and the Employer's Discretionary Contributions.

This Plan includes certain provisions that limit the availability of certain plan benefits and features for Highly Compensated Employees. These limitations are noted throughout this summary. Highly Compensated Employees are generally those employees who earned over the highly compensated threshold amount in the prior year (adjusted periodically by the IRS for cost of living increases). Your Employer may elect to limit the group of Highly Compensated Employees to the top-20% of employees, by pay. You will be informed if you are affected by limitations applicable to Highly Compensated Employees.

## YOUR CONTRIBUTIONS TO THE PLAN

### **Elective Contributions:**

You may elect to make pre-tax Elective Contributions in 1% increments up to 50% of annual Compensation, to a maximum of \$17,500 per calendar year for 2014. This maximum amount will be adjusted periodically for cost of living by the IRS. Your Elective Contributions shall be allocated to your own Elective Contribution Account.

If you do not elect to make pre-tax Elective Contributions to the Plan and you are a member of the Pantex Guard Union collective bargaining unit, 3% of your Compensation will automatically be contributed to an Elective Contribution Account on your behalf starting on the 30<sup>th</sup> day following your date of hire unless you affirmatively elect not to participate in the Plan by that date. If you are automatically enrolled in the Plan, your Elective Contribution rate will increase by 1% each year, unless you elect a different contribution rate.

The maximum dollar limitation is an aggregate limit that applies to all deferrals you make to this Plan and to any other elective deferral plan, including tax sheltered annuity contracts, simplified pension plans or other 401(k) plans.

If your pre-tax deferrals under this Plan in combination with a plan maintained by another employer during the same calendar year exceed the dollar limitation on deferrals, you may assign all or part of the excess amount to this Plan by notifying the Plan Administrator on or before March 15<sup>th</sup> of the following calendar year. The excess amount you have assigned to this Plan plus earnings, if there are any, will be distributed to you by the next April 15<sup>th</sup>. Any excess amounts, plus any earnings, arising under this Plan (or this Plan and another plan maintained by the Company or affiliated Employers) will automatically be distributed to you. To the extent that a highly compensated employee who is eligible to make Catch-Up Contributions has not reached the Catch-Up Contribution limit, excess contributions shall be retained as Catch-Up Contributions.

In addition, your Elective Contributions are subject to certain non-discrimination rules that prevent these contributions from disproportionately benefiting Highly Compensated Employees (generally those employees who earned over the highly compensated threshold amount in the prior year, adjusted periodically by the IRS for cost of living increases). You will be notified if these tests affect your Elective Contributions.

Keep in mind that although amounts deferred to the Plan are not subject to federal income tax, they are subject to withholding for employment taxes (such as FICA).

**Example of Pre-Tax Savings:** Here's a simple example of current tax savings for a person earning \$25,000 a year and saving 10% of his or her salary on a pre-tax basis compared with saving 10% of salary on an after-tax basis (as though you'd saved at a local bank). Note that the example does not take other tax exemptions and exclusions into account (and does not take into account state or local income taxes that may apply).

	<u>Saving Pre-Tax Through the Plan</u>	<u>Saving After-Tax</u>
Gross Income	\$ 25,000	\$ 25,000
Pre-Tax Contribution (10%) (untaxed)	2,500	0
Taxable Income	22,500	25,000
Federal Tax (assume 15% bracket)	3,375	3,750
Saving Deposit (after taxes)	0	2,500
Spendable Income	19,125	18,750

Your pay and savings advantage: \$375

Effective as of October 3, 2011, you may also make after-tax Roth 401(k) contributions to the Plan. Roth 401(k) contributions will be treated as Elective Contributions for all purposes under the Plan including the dollar limits on contributions to the Plan.

#### **Catch-Up Contributions:**

If you are eligible to make Elective Contributions and you have or will attain age 50 by the end of the calendar year, you are allowed to defer an additional amount in excess of the otherwise applicable Plan and tax law limits on Elective Contributions. These amounts are referred to as "Catch-Up Contributions." The additional amount for 2014 is \$5,500 and this amount is adjusted periodically by the IRS for cost of living.

#### **Making and Modifying Elections:**

You may commence, increase, decrease, discontinue, or resume after a discontinuance your Elective Contributions upon notice to the Third Party Administrator in accordance with procedures established by the Plan Administrator. Your instructions to increase, decrease, or cease Elective Contributions will be implemented as of the first payroll period following the date you notify the Third Party Administrator.

#### **Rollovers or Transfers:**

- If you wish to make a rollover or a transfer to this Plan of amounts from another eligible retirement plans sponsored by a state or its agencies or subdivisions, tax-qualified plan, or certain IRAs, you must submit a request to the Third Party Administrator (in accordance with procedures established by the Plan Administrator), who will determine whether a rollover or transfer is acceptable. If allowed, such amounts shall be allocated to your own Rollover Contributions Account or Transfer Account depending on whether there was a rollover or transfer.
- Amounts attributable to rollover contributions or plan-to-plan transfers are included in determining whether the value of your Account balance at termination of employment or retirement is \$1,000 or less for purposes of the Plan's automatic cash-out provisions.

In addition to making a rollover or a transfer of distributions from another tax-qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code, you may do so from the following source(s):

- an annuity contract described in Section 403(b) of the Internal Revenue Code;
- an eligible plan under Section 457 of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state;
- or an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income.

The Plan Administrator or Third Party Administrator will determine whether a rollover or transfer is acceptable.

- Prior to making a rollover or transfer, you should consult with your tax advisor.

## **YOUR EMPLOYER'S CONTRIBUTIONS TO THE PLAN**

*The aggregate amount, which may be allocated to your Account under this and all other Employer tax-qualified defined contribution plans in any year, is limited to the lesser of \$52,000 (2014) or 100% of your Compensation, adjusted from time to time by the IRS for increases in the cost of living.*

### **Employer Matching Contributions:**

Your Employer will match your Elective Contributions as follows:

- All Eligible Employees not entitled to an Enhanced Matching Contribution (as described in the next two paragraphs) are eligible for a Standard Matching Contribution. With respect to a Standard Matching Contribution, the Employer will match your pre-tax contributions 50% on the dollar, up to 8% of your eligible Compensation.
- Eligible Employees who (a) are members of the Pantex Guards Union and (b) either (1) accepted employment before March 18, 2002 and elected enhanced match and declined participation or continued participation in the B&W Pantex, LLC Retirement Plan for Bargaining Unit Members of the Pantex Guards Union, or (2) accepted employment on or after March 18, 2002, the Employer will match your pre-tax contributions 100% on the dollar, up to 10% of your eligible Compensation.
- Eligible Employees who are members of The Metal Trades Council of Amarillo, Texas and Vicinity, A.F.L.-C.I.O., the Employer will match your pre-tax contributions 62.5% on the dollar, up to 8% of your Eligible Compensation.

These contributions by your Employer are known as Matching Contributions and shall be allocated to your Matching Contributions Account.

**Catch-Up Contributions:**

Subject to the limitations described above, Catch-Up Contributions are also matched by the Employer.

**Eligibility for Employer Matching Contributions:**

Any employee who makes Elective Contributions is eligible to receive Matching Contributions.

**Discretionary Contributions:**

Your Employer may also make a discretionary contribution to the Plan known as a Discretionary Contribution. A Discretionary Contribution, if any, will be allocated in the ratio that the sum of each eligible Participant's total Compensation bears to the sum of all eligible Participants' Compensation. Such contributions shall be allocated to your Discretionary Contribution Account.

**Eligibility for Discretionary Contributions:**

Any Participant who is credited with a Year of Service and is employed on the last day of the Plan Year will be eligible to receive an allocation of any Discretionary Contribution that is made. A Participant will also be eligible to share in any Discretionary Contribution for the Plan Year if he terminated employment during the Plan Year on account of death, becoming disabled, or after reaching age 55 with at least ten Years of Service or Normal Retirement.

**Supplemental Contributions:**

Your Employer may also make a discretionary contribution to the Plan for purposes of passing nondiscrimination tests applicable to the Plan. Such contributions are known as a Supplemental Contributions. If made, Supplemental Contributions shall be allocated to your Supplemental Contribution Account.

**Employer Contribution for Members of Pantex Guard Union**

If you are a member of the Pantex Guard Union collective bargaining agreement, an Eligible Employee, and you are employed by the Employer during the first pay period of the calendar year, the Employer will contribute to the Plan at the time that you receive your paycheck for that period \$500 to the Plan. This Employer contribution will be made regardless of whether you are making (or have ever made) Elective Contributions to the Plan.

## **VESTING**

**Vesting Defined:**

Vesting means that for each Year of Service you complete, you may become entitled to all or a portion of the amounts allocated to your Matching Contributions and Discretionary Accounts.

**Vesting of Employee Contributions:**

You are always 100% vested in your Elective Contributions Account, Transfer Account, Predecessor Employee Account, Rollover Contributions Account, and Supplemental Contribution Account. The Predecessor Employee Account refers to the account established and maintained by the Plan for a Participant with respect to his interest in the Plan derived from contributions prior to February 1, 2001 to either the Mason & Hanger Corporation 401(k) Plan for Bargaining Employees or the Mason & Hanger Corporation 401(k) Plan for Non-Bargaining Employees (each is referred to herein as a “MHC 401(k) Plan”).

**Vesting Schedule for Employer Matching Contributions and Discretionary Contributions:**

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 2	0%
2	20%
3	40%
4	60%
5	80%
6	100%

A Participant shall also be 100% vested in his Matching Contributions Account and Discretionary Contributions Account upon reaching Normal Retirement Age, death, or becoming totally and permanently disabled while employed by the Employer.

In addition, a Participant will also be 100% vested in his Matching Contributions Account and Discretionary Contributions Account if his employment is terminated, either voluntarily or involuntarily, pursuant to a workforce restructuring program of the Employer and (1) the workforce restructuring program is announced by the Employer on or after August 15, 2008, (2) the announcement states that Participants who terminate employment under the workforce restructuring program are eligible for accelerated vesting of their Matching Contributions and Discretionary Contributions Accounts, and (3) the Participant has at least two (2) Years of Service (as defined below) on date that he terminates employment.

**Year of Service for Vesting Defined:**

A Year of Service refers to a computation period in which the employee is credited with six consecutive Months of Service. A Month of Service means a calendar month during any part of which an employee completes an Hour of Service. A Participant shall be credited with a Month of Service for each month during each 12 month period in which he has not incurred a One-Year Break in Service. The computation period is the date on which an employee first performs an Hour of Service or is rehired and anniversaries thereof. An Hour of Service is generally each hour for which you are paid or entitled to payment for the performance of duties for the Employer. You may be credited for hours, not to exceed 501 in a single continuous period, while on vacation, approved FMLA or military leave.

**Predecessor Service for Vesting:**

All Service prior to February 1, 2001 with Mason & Hanger Corporation and Battelle Memorial Institute and their controlled group affiliates recognized as Hours of Service under a MHC 401(k) Plan are credited as Hours of Service under the Plan. Similarly, all Service with Mason & Hanger

Corporation and Battelle Memorial Institute and their controlled group affiliates credited as Months of Service under a MHC 401(k) Plan prior to February 1, 2001 are credited as Months of Service under the Plan. In addition, for purposes of vesting, any period of service credited as vesting service under any qualified plan maintained by BWX Technologies, Inc., Honeywell International, Inc., or Bechtel National, Inc., or any affiliate of such entities, shall be recognized and will be counted for vesting purposes.

**Normal Retirement Age:**

The Normal Retirement Age under the Plan is age 65.

**Early Retirement:**

There are no early retirement provisions in this Plan. Instead, your benefit is available to you, subject to the Plan's vesting schedule, if any, upon your termination of employment for any reason.

**Disability:**

You will be considered to be totally and permanently disabled if your physical or mental condition resulting from bodily injury, disease, or mental disorder renders you incapable of continuing any gainful occupation. Disability shall be determined by a licensed physician chosen by the Plan Administrator. If you terminate employment due to Disability, you may elect to receive a distribution from the Plan.

**Forfeitures:**

If you terminate service prior to being fully vested in your Account under the Plan, you will forfeit the amount in which you are not vested at the earlier of the date you receive a distribution of your vested Account Balance or the date you incur five consecutive One-Year Breaks in Service. In the case of a terminated Participant whose vested account balance is zero, such terminated Participant will be deemed to have received a distribution of his vested account balance upon his termination of employment. A One-Year Break in Service means a period of 12 consecutive months following an employee's severance date during which he does not perform an Hour of Service.

Forfeitures will be used to reduce Matching Contributions and Discretionary Contributions and may, in the discretion of the Plan Administrator, be used to pay Plan expenses or to restore contributions for certain former Participants who are re-employed.

If a former Participant who received a distribution of the vested portion of his account balance is re-employed before incurring five consecutive One-Year Breaks in Service, the amount forfeited will be restored only if he repays the full amount distributed to him before the earlier of five years after the first date on which the Participant is subsequently re-employed or the close of the first period of five consecutive One-Year Breaks in Service commencing after the distribution, or in the event of a deemed distribution, upon the re-employment of such former Participant.

**Break in Vesting Service:**

Vesting Service is used to determine a Participant's vested percentage in his Discretionary

Contributions Account and Matching Contributions Account. Vesting Service includes all years of Service except those (1) occurring prior to five consecutive One-Year Breaks in Service, or (2) earned after five consecutive One-Year Breaks in Service. A One-Year Break in Service means a period of 12 consecutive months following an employee's severance date during which he does not perform an Hour of Service.

If a Participant has any vested interest in his Account at the time he incurs a One-Year Break in Service, then after he has met the eligibility requirements following such One-Year Break in Service, all prior Years of Service shall be counted (unless disallowed under a prior One-Year Break in Service).

If a Participant has any vested interest in his Account at the time he incurs a One-Year Break in Service and receives a distribution of his vested Account balance, and the Participant is rehired prior to incurring five consecutive One-Year Break in Service periods, the Participant may elect to repay the amount previously distributed from his Accounts. The forfeited amount shall be restored upon such repayment. Amounts repaid shall be 100% vested and shall be invested in the same manner as future contributions.

If a Participant has any vested interest in his Account at the time he incurs a One-Year Break in Service, and the number of consecutive One-Year Break in Service periods exceeds the greater of five or his pre-break Service, then his Vesting Service rendered after such Break in Service shall only be counted for purposes of determining his vested Accrued Benefit accruing after such Break in Service.

If, at any time when the Participant is zero percent vested in his Account, the Participant incurs a One-Year Break in Service, and the number of such One-Year Break in Service periods equals or exceeds the greater of five or his pre-break Service, his Vesting Service shall not include any Service occurring prior to such Break in Service.

### **Investment of Contributions:**

As a Participant in this Plan, you direct the investment of your Account(s). The Plan provides a menu of investment options from which you may select your investments. If a percentage of your Compensation is automatically contributed to the Plan as an Elective Contribution, you Elective Contribution will be invested in the default investment option designated by the Plan Administrator, unless you direct otherwise. You should be aware that your investment decisions will ultimately affect the retirement benefits to which you will become entitled. Your Employer and the Plan Trustee(s) cannot provide you with investment advice, nor are they obligated to reimburse any Participant for any investment loss that may occur as a result of his or her investment decisions. There is no guarantee that any of the investment options available in this Plan will retain their value or appreciate.

The Employee Retirement Income Security Act of 1974 (ERISA) imposes certain duties on the parties who are responsible for the operation of the Plan. These parties, called fiduciaries, have a duty to invest Plan assets in a prudent manner. However, an exception exists for plans that comply with ERISA Section 404(c) and permit participants to exercise control over the investment of the assets in their accounts and choose from a broad range of investment alternatives. This Plan is intended to be a Section 404(c) plan. This means that the Plan fiduciaries are relieved from liability for any losses that are the direct and necessary result of investment instructions given by Participants or Beneficiaries in this Plan.

## **BENEFITS UNDER THE PLAN**

### **In-Service Withdrawals:**

As an active Participant in the Plan, you may submit an application to the Third Party Administrator to withdraw all or a portion of your vested Account Balance at any time upon or after your attainment of age 59 1/2. Withdrawals based on attaining age 59 1/2 are limited to one withdrawal per calendar quarter. Further, you may make withdrawals from your Elective Contributions Account during any period that you are performing service in the uniformed services. For details on how to apply for an in-service withdrawal, please contact the Third Party Administrator.

### **Other In-Service Withdrawals:**

As an active Participant in the Plan, you may submit an application to the Third Party Administrator to withdraw all or a portion of your Rollover Contribution Account, if any. For details on how to apply for a withdrawal, contact the Third Party Administrator.

### **Benefit Commencement:**

In general, if your vested Account Balance exceeds \$1,000, distribution of your benefit will not be made before the earlier of:

- the date you consent to the distribution; or
- the date of your death.

In any event, you must begin to receive your benefit no later than the April 1st following the calendar year in which you attain age 70-1/2 or terminate employment, whichever is later. If you are a more than 5% owner, however, you must begin to receive your benefit no later than the April 1<sup>st</sup> following the calendar year in which you attain age 70-1/2.

You will receive a notice before you become eligible for an age 70-1/2 distribution about the forms of payment for which you are eligible and the amount of your benefit.

### **Hardship Distributions:**

As an active Participant in the Plan, you may submit an application to the Third Party Administrator for a hardship distribution, if you are experiencing an immediate and heavy financial need. The distribution shall be made from the vested portion of your Matching Contributions Account, Discretionary Contributions Account, Supplemental Contribution Account, and Elective Contributions Account. For details on how to apply for a distribution, contact the Third Party Administrator.

### **Events Which Qualify for a Hardship Distribution:**

1. To obtain medical care and to cover medical expenses incurred by you, your spouse, or your dependents that would be deductible under Code § 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);

2. For costs directly related to the purchase of a principal residence (excluding mortgage payments) (provided that you have already taken a loan from the Plan for the purchase of your principal residence);
3. For the payment of tuition, room and board expenses and related educational fees for the next 12 months of post-secondary education for you, your spouse, your children or your dependents (as defined in Code § 152 without regard to Code § 152(b)(1), (b)(2), or (d)(1)(B));
4. For the payment of amounts necessary to prevent eviction from or foreclosure on your principal residence;
5. For the payment of funeral expenses for a member of your deceased parent, spouse, child or other dependent;
6. For the repair of damage to your principal residence that would qualify as a casualty deduction (but determined without regard to whether the expenses exceed 10% of your adjusted gross income); or
7. For such other reasons as the Commissioner of Internal Revenue may publish and that are adopted by the Plan Administrator.

All other forms of financial assistance (including other distributions and loans otherwise available under the Plan) must be explored and exhausted before a hardship distribution can be made.

The amount of a hardship distribution cannot exceed the amount of the need (including amounts necessary to pay any Federal, state or local income taxes or penalties reasonably anticipated to result from the distribution). If you take a hardship distribution attributable to Elective Contributions, all of your contributions to the Plan will be suspended for a period of 6 months following the date the distribution is taken. However, the maximum amount of Elective Contributions that you may make to the Plan will not be reduced solely because you take a hardship distribution.

#### **Tax Consequences for Receiving a Distribution or Withdrawal:**

Distribution and/or withdrawal of the vested amount of your Account may be subject to ordinary income taxes or early distribution penalties. Please consult your tax advisor prior to taking any distribution or withdrawal.

#### **Loan Availability:**

A Participant in the Plan may request a loan to be taken from the Plan. A loan allows you to borrow money from your Account(s) without incurring a taxable event. You must repay the loan with interest, on an after-tax basis through payroll deduction, unless otherwise permitted by the Plan. You may have no more than one loan outstanding at any time.

For details on how to apply for a loan, any applicable restrictions under the loan program, or to find out the amount you have available to borrow from your Account(s) in the Plan, contact the Third Party Administrator. In addition, you may request a copy of the Plan's loan policies from the Plan Administrator or the Third Party Administrator.

**Loan Requirements:**

1. Loans are available to all Participants in the Plan on a uniform and nondiscriminatory basis.
2. Loans must bear a reasonable rate of interest.
3. The loan must be adequately secured.

**Loan Limitations:**

You may borrow any amount up to 50% of your vested Account(s). However, your loan can be no more than \$50,000 minus your highest outstanding loan amount during the prior 12 months. The amount of the loan must be equal to or greater than the minimum amount established under the Plan’s loan policy. The minimum loan amount is \$1,000. The following chart represents what you may borrow, assuming no outstanding loans during the prior 12-month period:

<u>If Your Vested Account Value Is:</u>	<u>You Can Borrow Up To:</u>
Less than the Plan minimum	No loan is available
Plan minimum - \$100,000	50% of your vested Account Balance
More than \$100,000	\$50,000

**Loan Repayments:**

Repayment of a loan must be made in level payments of principal and interest, and must be repaid within 5 years, or, in if the loan is for the purchase of you primary residence, within 15 years.. The Plan Administrator may permit loan payments to be suspended for up to 1 year during any unpaid leave of absence or during any period of qualified military service.

**Tax Consequences of Plan Loans:**

If you fail to make loan repayments when they are due, you may be considered to have defaulted on the loan. The loan will be satisfied by deducting the outstanding amount of the loan from your vested account balance. Such deduction will be considered a distribution to you from the Plan, resulting in taxable income to you and possibly early distribution penalties. The entire outstanding balance of a loan is due upon your death or termination of employment.

**Termination of Employment/Forms of Benefit:**

Upon your termination of employment or retirement, you will be entitled to a distribution of your vested Account Balance.

Form of Payment: The only form of payment with respect to your vested Account Balance under this Plan is a single lump sum payment.

If your vested Account Balance is \$1,000 or less, you will automatically receive a lump sum distribution as soon as administratively practicable following the date you terminate employment. If your vested Account Balance is greater than \$1,000, you (and your spouse, if applicable) must give consent before the distribution can be made. In determining whether your Account Balance is \$1,000 or less for this purpose, any Rollover Contributions you made to the Plan will be included.

### **Rollover Distributions:**

Certain distributions from the Plan constitute “eligible rollover distributions.” Generally, an “eligible rollover distribution” consists of the amount of the distribution that you receive. However, the following distributions are not eligible rollover distributions:

- annuity distributions or installments to be made over a period of 10 years or more;
- required minimum distributions after you attain age 70-1/2;
- hardship distributions;
- a required refund or corrective distribution from the Plan;
- defaulted loans.

An eligible rollover distribution may be rolled over directly from the Trustees of this Plan to the trustee or custodian of an eligible retirement plan, if the plan accepts such rollovers. For this purpose, an “eligible retirement plan” includes a plan qualified under section 401(a) of the Internal Revenue Code, including a 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan and money purchase plan; a section 403(a) annuity plan; a section 403(b) tax-sheltered annuity; certain individual retirement or annuity accounts, including Roth IRAs; and an eligible 457(b) plan maintained by a governmental employer (governmental 457 plan).

Similar rollover rules apply to distributions made to surviving spouses, non-spouse Beneficiaries (to an IRA or Roth IRA only), and alternate payees under qualified domestic relations orders.

The Third Party Administrator will notify you if any amount to be distributed to you is an eligible rollover distribution and will provide you with more detailed rollover tax information at the time of your distribution. Special tax withholding rules apply to any portion of the eligible rollover distribution that is not rolled over directly to an eligible retirement plan.

### **Death Benefits/Naming a Beneficiary:**

Your Discretionary Contributions Account and Matching Contributions Account become 100% vested upon your death.

Your named Beneficiary (or Beneficiaries) will be entitled to receive your Account Balance on account of your death.

If you are married, your spouse is automatically your Beneficiary (notwithstanding any Beneficiary designation form on file with the Plan Administrator) unless any of the following occur:

- You have properly elected otherwise in writing (with the consent of your spouse);
- You establish to the satisfaction of the Plan Administrator that you have no spouse or your spouse cannot be located;
- You establish to the satisfaction of the Plan Administrator that you are divorced or legally separated from your spouse or you have been abandoned by your spouse and you have a court order to that effect (unless a qualified domestic relations order provides otherwise).

If you want to designate a Beneficiary or change a prior Beneficiary designation, you must do so by contacting the Third Party Administrator and following the procedures established by the Plan Administrator. You may revoke or change this designation at any time by contacting the Third Party Administrator and following the procedures established by the Plan Administrator, however, if you are then married, your spouse must consent, in writing, to any alternate Beneficiary. A notary public or Plan official must witness your spouse's consent. If you fail to designate a Beneficiary in accordance with the Plan Administrator's process, or your designated Beneficiary predeceases you, your Account Balance will be paid to your Spouse, or if you do not have a Spouse or if your Spouse predeceases you, to your estate.

It is important that you notify the Plan Administrator of any change in your marital status or change in your Beneficiary designation.

### **Distributions Upon Death:**

If the value of your Account is \$1,000 or less, benefits will be distributed to your Beneficiary in the form of a single-sum payment without requiring your Beneficiary's consent as soon as administratively practicable following your death.

If the value of your Account exceeds \$1,000, benefits will be distributed to your Beneficiary in the form of a single-sum payment as soon as administratively practicable following your death, but in no event later than the fifth anniversary of your death. If the Beneficiary is your Spouse, your Spouse may direct the Plan Administrator to have all or a portion of the distribution directly rolled over to an eligible retirement plan. If your Beneficiary is not your Spouse, your Beneficiary may direct the Third Party Administrator to have all or a portion of the distribution rolled over to an individual retirement annuity, including a Roth IRA. If your Beneficiary dies before distribution is made, benefits will be paid to the Beneficiary designated by your Spouse or non-spouse Beneficiary, or if none, to the Spouse's or non-spouse Beneficiary's estate.

### **Qualified Domestic Relations Orders:**

As a general rule, your Account Balance may not be assigned. This means that your Account(s) cannot be sold, used as collateral for a loan, given away, or otherwise transferred. In addition, your creditors may not attach, garnish or otherwise interfere with your Account(s).

An exception to this general rule is a "qualified domestic relations order" or QDRO. A QDRO is a court order that can require the Plan Administrator to pay a portion of your Account Balance to your former spouse, child or other dependent.

You may request to receive a copy of the Plan's procedures governing QDROs from the Plan Administrator free of charge.

**Top-Heavy Defined:**

A plan becomes Top-Heavy when 60% or more of the Plan’s assets are allocated to Key Employees. Key Employees are certain owners or officers of your Employer. If the Plan becomes Top-Heavy, certain rules apply.

**Top-Heavy Rules:**

A minimum contribution will be required to Non-Key Employees. This contribution is the lesser of:

- 3% of Compensation; or
- the largest percentage of Compensation contributed by the Employer on behalf of Key Employees.

If you are a Participant in more than 1 plan maintained by your Employer, you may not be entitled to minimum benefits in more than 1 plan.

**Vesting Schedule for Top-Heavy:**

If the Plan is Top-Heavy, the following vesting schedule will apply to Employer Matching and Profit Sharing Contributions unless the vesting schedule already in effect is more favorable based on your Years of Service.

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 2	0%
2	20%
3	40%
4	60%
5	80%
6	100%

## STATEMENT OF ERISA RIGHTS

As a Participant in the Plan, you are entitled to certain rights and protection under the Employee Retirement Income Security Act of 1974 (ERISA).

ERISA provides that all Plan Participants shall be entitled to:

### **Receive Information About the Plan and Benefits:**

Examine without charge, at the Plan Administrator's office and at other specified locations such as worksites and union halls, all documents governing the Plan, including insurance contracts and collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.

Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated summary plan description. The administrator may make a reasonable charge for the copies.

Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each Participant with a copy of this summary annual report.

Obtain a statement telling you whether you have a right to receive a vested benefit at Normal Retirement Age or earlier and if so, the amount of your benefit if you stop working under the Plan now. If you do not have a right to a benefit, the statement will tell you how many more years you have to work to get a right to a benefit. This statement must be requested in writing and is not required to be given more than once every 12 months. The Plan must provide the statement free of charge.

### **Prudent Actions by Plan Fiduciaries:**

In addition to creating rights for Plan Participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan Participants and Beneficiaries. No one, including your Employer, your union or any other person, may fire you or otherwise discriminate against you in any way solely in order to prevent you from obtaining a pension benefit or exercising your rights under ERISA.

### **Enforce Your Rights:**

If your claim for a benefit under the Plan is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan

Administrator. If you have a claim for benefits that is denied, or ignored, in whole or in part, you may file in a state or Federal court. In addition, if you disagree with the Plan's decision or lack thereof concerning the qualified status of a domestic relations order, you may file suit in Federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

### **Assistance with Your Questions:**

If you have any questions about the Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

## **CLAIMS PROCEDURES**

### **Benefit Claims Other Than on Account of Disability:**

When you make a claim for benefits, you must notify the Plan Administrator. The Plan Administrator can provide you with a copy of the form that must be completed in order to process your claim for benefits.

If, after your claim for benefits is processed, you have questions or disagree with the calculation of your benefit, you must notify the Plan Administrator in writing. The Plan Administrator will, within 90 days (or within 180 days if special circumstances exist) notify you in writing of its decision. If your claim for a Plan benefit is denied in whole or in part, you must receive a written explanation of the reason for the denial. That notification will include:

1. How your benefit was calculated;
2. The specific reason that your claim is denied (in whole or in part) if it is denied;
3. Specific references to Plan provisions on which the denial is based;
4. A description of any additional material or information necessary for you to perfect your claim and an explanation of why such information is necessary;
5. An explanation of the Plan's claim review procedure.

Within 60 days after you receive notice of the denial of part or your entire claim for benefits, you may file a written appeal with the Plan Administrator. You may seek representation by an attorney or other representation of your choosing. You may submit written and oral evidence and arguments in support of your claim. You may review all relevant documents. The Plan

Administrator generally makes a final decision within 60 days of your appeal. The Plan Administrator's decision will include the specific reasons for its decision and specific references to Plan provisions on which the decision is based.

### **Benefit Claims on Account of Disability:**

If a claim for benefits is based on a determination of your Disability by the Plan Administrator, your claim for Disability-based benefits will be processed within 45 days of receipt unless your application is incomplete. The Plan Administrator will notify you or your representative within the initial 45-day period if your application is incomplete.

If the Plan Administrator needs additional information, the initial 45-day period will be suspended. When the information is received, the Plan Administrator has the remainder of the 45-day period to process the application.

In unusual circumstances, the Plan Administrator may extend the initial 45-day period to process your application by up to two 30-day extensions. If it does so, you will be notified in writing of the first extension before the end of the first 45-day period. You will be notified of the second extension before the end of the first 30-day extension period. If the Plan Administrator is waiting for information from you during a 30-day extension, the period during which it must wait is not counted toward the 30 days.

If your initial application for Disability-based benefits is denied in whole or in part, the Plan Administrator will provide you with a written explanation of the denial and your rights to have the denial appealed. The explanation also will describe any other information or material that you can provide that on appeal may result in a reversal of the denial.

You may then submit a written request for reconsideration of your claim within 180 days after the denial. Any such request should be accompanied by documents or records that support your appeal and should be sent to the Plan Administrator at the address shown in the "General Information About The Plan" section of this SPD.

The Plan Administrator will consult with vocational and medical experts in deciding your appeal for technical advice and opinions on claim appeals when appropriate.

The Plan Administrator will make a final claim determination within 45 days of its receipt of your request for an appeal of the initial denial. If the Plan Administrator needs additional information to process the appeal, it will notify you or your representative and request the information. While the Plan Administrator waits for the information, the 45-day period will be suspended.

When the information is received, the Plan Administrator has the remainder of the original 45-day period to process the appeal. In special circumstances, the Plan Administrator may extend the original 45-day period. You will be notified in writing of the extension before the end of the original 45-day period. The period for processing the appeal may not exceed 90 days (not including the time the Plan Administrator waits for information it requests from you).

You have the right to request copies of the rules, guidelines or other information the Plan Administrator relies on in making its final decision. If you receive a denial letter, it will explain those rights. You also have certain rights under ERISA if you receive a final denial on appeal. The rights are explained in the "Statement of ERISA Rights" section of this SPD.

## MISCELLANEOUS

### **Payment of Expenses:**

All reasonable expenses of operating and administering the Plan may be deducted from the Trust Fund or, at the election of the Employer, paid directly by the Employer.

### **Plan Amendment or Termination:**

Your Employer reserves the right to amend the Plan at any time. However, no amendment can deprive you of any vested accrued benefits.

Your Employer also reserves the right to terminate the Plan. If the Plan is terminated, or there is a complete discontinuance of all contributions to the Plan, affected Participants will become 100% vested in their total Account Balance under the Plan.

If the Plan undergoes a “partial termination” as defined in federal law, affected Participants will become 100% vested in their total Account Balance under the Plan.

### **Pension Benefit Guaranty Corporation:**

This Plan is a defined contribution plan. Therefore, the Plan is not subject to or insured by the Pension Benefit Guaranty Corporation (PBGC).