

**B&W PANTEX
RETIREMENT PLAN FOR NON-BARGAINING EMPLOYEES**

Amended and Restated
Generally Effective January 1, 2010

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PREAMBLE

- I. Designation. The Plan is hereby designated as the B&W PANTEX RETIREMENT PLAN FOR NON-BARGAINING EMPLOYEES.
- II. Purpose. The purpose of the Plan shall be to continue to provide benefits to Participants upon retirement, Disability, death and, in certain events, termination of Service, upon the terms and conditions, and subject to the limitations contained herein. The Plan is hereby designated as a defined benefit plan under the Code.
- III. Applicability of Plan. The provisions of the Plan shall apply only to persons in the employ of the Employer on or after the Effective Date. The rights and benefits, if any, of persons who were in the employ of the Employer prior to the Effective Date, but who are not in the employ of the Employer on or after the Effective Date, shall be determined in accordance with the provisions of the Prior Plan in effect on the date their employment terminated.
- IV. Plan Sponsor. The Plan is sponsored by Babcock & Wilcox Technical Services Pantex, LLC, known as B&W Pantex.

ARTICLE 1 - DEFINITIONS

The following words and phrases when used herein shall have the meanings set forth below unless a different meaning is plainly required by the context.

1.01 Accrued Benefit

“Accrued Benefit” shall mean as of any date, the amount of retirement benefit, payable annually under the Normal Form, as calculated under Article 3, to which the Participant is entitled upon attaining his Normal Retirement Age.

In no event will a Participant's Accrued Benefit be reduced below the amount in effect prior to any prospective reductions in Section 415(b)(1) of the Code. Such Accrued Benefit is preserved under Section 3.07, entitled “Maximum Benefit.” Moreover, no reduction in a Participant's Accrued Benefit will occur as a result of the reduction in maximum amount of Earnings used in the Plan imposed under Sections 414(q) and 401(a)(17) of the Code, as adjusted from time to time by the Secretary of the Treasury.

1.02 Affiliated Company or Affiliated Group

“Affiliated Company” or “Affiliated Group” shall mean 1) any corporation on or after the date that such corporation is, along with Employer, a member of a controlled group of corporations (as defined in Section 414(b) of the Code); 2) any trade or business (whether or not incorporated) on or after the date that it is under common control with Employer as described in Section 414(c) of the Code; 3) an organization (whether or not incorporated), which is a member of an affiliated service group as defined in Section 414(m)(2) or (5) of the Code that includes the Employer, and any other entity required to be aggregated, with the Employer pursuant to regulations issued under Code Section 414(o).

If the Sponsoring Employer and any other Employer are not members of the same Affiliated Group as defined in this Section, then the term Affiliated Employer and Affiliated Group shall be applied separately with respect to each such Employer.

1.03 Beneficiary

The person or entity entitled pursuant to this Plan to receive a Benefit payable hereunder upon or after a Participant's death.

1.04 Board of Managers

The Board of Managers of Babcock & Wilcox Technical Services Pantex, LLC, known as B&W Pantex.

1.05 Code

“Code” shall mean the Internal Revenue Code of 1986, as heretofore and hereafter amended.

1.06 Computation Period

“Computation Period” shall mean with respect to eligibility to participate in the Plan and vesting, a twelve (12) consecutive month period beginning on an Employee's Employment Commencement Date and anniversaries of the Employee's Employment Commencement Date.

1.07 Disability or Disabled

“Disability” or “Disabled” shall mean a physical or mental condition arising after the original date of employment of a Participant which will totally and permanently prevent the employee from engaging in any occupation or employment for remuneration or profit, and which is not, directly or indirectly, the result of:

- (a) military duty (air, sea or land);
- (b) engaging in a felonious criminal enterprise;
- (c) habitual drunkenness or use of narcotics provided, however, that where such Participant is determined to be a qualified individual with a disability within the meaning of the Americans With Disabilities Act (42 United States Code § 12101 et seq.) with respect to such disability, the exclusion contained in this subparagraph shall be limited to such Participant's engaging in the illegal use of drugs or alcohol within the meaning of 42 United States Code § 12114;
- (d) intentionally self-inflicted injury; or
- (e) declared or undeclared war or any enemy action.

The determination of whether a Participant is Disabled shall be made, in the sole discretion of the Plan Administrator, based upon competent medical authority. No Participant shall be determined to have incurred a Disability until such condition has lasted for a period of at least six (6) months.

1.08 Early Retirement Age

“Early Retirement Age” shall mean for individuals retiring prior to July 1, 1991, the Participant's attainment of age 55 and completion of ten (10) one-year Periods of Service with the Employer. For individuals retiring on or after July 1, 1991, the Participant's attainment of age 55 and completion of one hundred twenty (120) one-month Periods of Service with the Employer.

1.09 Early Retirement Date

“Early Retirement Date” shall mean the first day of the month coinciding with or next following the date an Active or Terminated Participant, who has attained Early Retirement Age, elects to become a Retired Participant. Provided, however, an Early Retirement Date may not precede the Participant's Normal Retirement Date by more than ten (10) years.

1.10 Earnings

“Earnings” shall mean the wages paid to the Participant during the Plan Year as determined for purposes of Federal Income Tax Withholding (as defined in Section 3401(a) of the Code). Earnings shall be determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed. Provided, however, there shall be excluded from the term Earnings, bonuses, overtime, and (even if includable in gross income), reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation and welfare benefits, Employer's contributions to Social Security, Disability, unemployment, and workmen's compensation funds; and contributions to this or any other retirement plan or program.

Notwithstanding the above, Earnings shall include any amount which is contributed by the Employer pursuant to a salary reduction agreement which is not includable in gross income of the Participant under Sections 125 (cafeteria plan contributions – including, effective January 1, 1998, Deemed Section 125 Compensation described in Section 3.07), 401(k) (elective deferrals) and, effective January 1, 2001, 132(f) (transportation benefits). Earnings shall also include regular pay after severance of employment to the extent such amounts are paid by the later of 2 ½ months after severance from employment or by the end of the Limitation Year that includes the date of such severance from employment if (i) the payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and (ii) the payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer. Any other payment of compensation paid after severance of employment is not considered Earnings even if payment is made within the time period specified above. Earnings for a Plan Year or a Limitation Year shall not include amounts earned but not paid during the Plan Year or Limitation Year solely because of the timing of pay periods and pay dates. Earnings for a Plan Year or Limitation Year shall not include earnings or compensation in excess of the limitation under Section 401(a)(17) of the Code in effect for such year.

For Plan Years beginning on or after January 1, 2002, Earnings in excess of \$160,000 shall be disregarded. Such amount shall be adjusted at the same time and in the same manner as the Commissioner of Internal Revenue Service makes adjustments pursuant to Section 401(a)(17)(B) of the Code. For Plan Years beginning on and after January 1, 1994 but before January 1, 2002, Earnings in excess of \$150,000 shall be disregarded. For Plan Years

beginning on and after January 1, 1989 and prior to January 1, 1994, as well as Plan Years beginning on and after January 1, 2002, Earnings in excess of \$200,000 shall be disregarded. Such amount shall be adjusted at the same time and in the same manner as the Commissioner of Internal Revenue makes adjustments pursuant to Section 401(a)(17) of the Code. Any adjustment to the maximum compensation limitation shall be effective for the Plan Year beginning in the calendar year to which such adjustment relates. The maximum compensation limitation shall be prorated for any Plan Year of less than twelve (12) months.

In applying this maximum compensation limitation for Plan Years beginning prior to January 1, 1997, the Earnings of a Highly Compensated Employee who is either a five percent (5%) owner as defined in Code Section 416(i) or one of the ten (10) Highly Compensated Employees paid the greatest compensation as defined in Code Section 414(q) during the year, shall be aggregated with the Earnings of any Family Member of such Highly Compensated Employee and such family group shall be treated as a single Employee. "Family Member" shall mean the spouse of such Highly Compensated Employee and any lineal descendants who have not attained age nineteen (19) before the close of the year. If as a result of the application of such rules, the adjusted maximum compensation limitation is exceeded, then (except for purposes of determining the portion of Earnings up to the integration level if this Plan is integrated), the limitation shall be prorated among the affected individuals in accordance with Sections 401(a)(17) and 414(q) of the Code and regulations issued thereunder. The family aggregation rules in this paragraph shall not apply in Plan Years beginning on or after January 1, 1997.

1.11 Effective Date

"Effective Date" shall mean the effective date of this Amendment and Restatement of the Plan, which shall be January 1, 2010 unless another effective date is specifically provided for in a specific provision.

1.12 Eligible Class

"Eligible Class" shall mean all Employees employed by the Employer at the Pantex Plant Facility. Provided, however, there shall be excluded from the Eligible Class:

- (a) leased Employees as defined in Code Section 414(n) or (o);
- (b) any person whose employment becomes the subject matter of a collective bargaining agreement between employee representatives and the Employer unless such collective bargaining agreement expressly provides that such person is eligible for participation in the Plan including, without limitation, any member of the Pantex Guards Union collective bargaining unit or The Metal Trades Council of Amarillo, Texas and Vicinity, A.F.L.-C.I.O. collective bargaining unit;
- (c) any non-bargaining employee who is (i) employed as a Security Force Employee at the Employer's Pantex Plant, (ii) is required to meet the physical fitness and other requirements of the Security Force of the Employer, and (iii)

is required to carry a firearm in the regular course of his employment with the Employer; and

- (d) effective on and after February 17, 2003, any non-bargaining employee who is employed as a Firefighter, MPO or Firefighter/Paramedic who is a responder at the Employer's Pantex Plant ("Non-Bargaining Firefighter").
- (e) any Employee who is a (i) member of the West Texas Building Trades Council Union, (ii) cooperative education student or (iii) intern.

Any person classified by the Employer as an independent contractor or consultant regardless of whether he is subsequently reclassified for such period, retroactively or otherwise, by any court, regulatory body or taxing authority shall be excluded from the Eligible Class.

1.13 Employee

"Employee" shall mean any individual employed by Employer and entitled to remuneration for services rendered, other than independent contractors. Effective as of the first day of the Plan Year beginning in 1984, an Employee includes leased Employees who:

- (a) provide services pursuant to an agreement between the Employer or related persons and a leasing organization;
- (b) perform services for the Employer or related persons on a substantially full-time basis for a period of at least one (1) year; and
- (c) perform such services under the primary direction or control of the Employer or related persons.

Notwithstanding the foregoing, the term Employee shall not apply to any leased Employee of the Employer if (1) leased Employees do not constitute more than twenty percent (20%) of the Employer's Non-Highly Compensated Employees and (2) the leased Employee is covered by a money purchase pension plan maintained by the leasing organization which provides (i) a non-integrated employer contribution rate for each participant of at least ten (10%) percent of compensation, (ii) full and immediate vesting and (iii) immediate participation for all employees of the leasing organization (with exceptions as described in Code Section 414(n)).

1.14 Employer

"Employer" shall mean (a) on or before January 31, 2001, Mason & Hanger Corporation, a West Virginia corporation with its office and principal place of business in Lexington, Kentucky and its predecessors; (b) on or before October 1, 2001, Battelle Memorial Institute; (c) on or after February 1, 2001, Babcock & Wilcox Technical Services Pantex, LLC, known as B&W Pantex (formerly known as BWXT Pantex, LLC), (d) any successor, subsidiary or affiliated corporation during such periods, (e) any Affiliated Company during such periods, and (f) any other company, whether a corporation, joint venture or otherwise,

whose own governing body shall duly adopt this Plan with the consent of the Board of Managers of the entity specifically named in Subsection (a) as signified by the execution of this document or a joinder agreement making specific reference to this document.

1.15 Employment Commencement Date

“Employment Commencement Date” shall mean the first day on which the Employee is credited with an Hour of Service.

1.16 Excused Absence

“Excused Absence” shall mean any of the following:

- (a) Temporary leave of absence granted to an Employee by Employer pursuant to the Employer's established leave policy or the Family and Medical Leave Act of 1993;
- (b) Absence for Military Service;

Provided that the Employee returns to active employment with the Employer upon the expiration of a leave of absence within the period during which his right to reemployment is protected by law. Upon completion of Military Service, an Employee must apply for re-employment with the Employer:

- (i) no later than ninety (90) days after completion of such Military Service (or such shorter time as may be provided for by law); or
- (ii) in the event of injury or illness resulting from such Military Service, no later than ninety (90) days after recovery from such injury or illness; provided, however, that such recovery period shall not exceed two (2) years unless the Plan Administrator determines that, due to circumstances beyond the Employee's control, compliance with such deadline was unreasonable or impossible.

If the Employee does not return to active employment with the Employer, his Service will be deemed to have ceased on the termination of employment date established by the Employer, but not earlier than the date on which payment of regular compensation on account of such leave is discontinued.

The Employer's leave policy shall be applied in a uniform and non-discriminatory manner to all Employees under similar circumstances.

1.17 Facility

Any separate and distinct plant or operational facility being operated by the Employer under a government contract.

1.18 Final Average Earnings

“Final Average Earnings” shall mean, subject to the following paragraph, the average of the Participant's Earnings during the five (5) consecutive Plan Years which gives the highest average out of the last ten (10) Plan Year period which precedes the Plan Year during which the Participant's Retirement Date, date of termination or date of death occurs, whichever is earlier. In the event that a Participant does not receive Earnings for at least five (5) consecutive Plan Years, his Final Average Earnings will be determined from the average Earnings during his total consecutive Plan Years.

Provided, however, for Plan Years commencing prior to January 1, 1992, Earnings paid during such years, shall be excluded from both the five (5) consecutive Plan Year and ten (10) Plan Year averaging periods referred to in the immediately preceding paragraph. Notwithstanding the foregoing, if a Participant terminates employment for any reason during the Plan Year beginning January 1, 1992, then Final Average Earnings shall be determined on the basis of Earnings during the period October 1, 1991 through the date of such Participant's termination of employment.

1.19 Highly Compensated Employee

“Highly Compensated Employee” shall mean, during a Plan Year, any Employee who either:

- (a) during the current Plan Year or the Look-Back Year, was at any time a five percent (5%) or more actual or constructive owner of the Employer or any Affiliated Company; or
- (b) during the Look-Back Year received Compensation from the Company and all Affiliated Companies greater than Eighty Thousand Dollars (\$80,000) (plus any increase for cost of living after 1998 as determined by the Secretary of the Treasury or his delegate) and, if the Company so elects, was in the “top-paid group” of Employees of the Company or any Affiliated Company for the Look-Back Year.

For purposes of this Section, "Look Back Year" shall mean the twelve (12) month period immediately preceding the current Plan Year. As of the Effective Date of this Amendment and Restatement of the Plan, the Employer has not elected to use the top-paid group rules.

A former Employee is a Highly Compensated Employee if either:

- (a) such former Employee was a Highly Compensated Employee when such former Employee terminated his employment; or
- (b) such former Employee was a Highly Compensated Employee at any time after attaining age fifty-five (55).

As of the Effective Date of this Amendment and Restatement of the Plan, the Employer has not elected to use the top-paid group rules.

1.20 Hour of Service

"Hour of Service" shall mean:

- (a) each hour for which an Employee is paid or entitled to payment by the Employer for the performance of duties during the applicable Computation Period; and
- (b) each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or excused absence (including maternity or paternity leave or other Excused Absence) during the applicable Computation Period. Notwithstanding any provision in this paragraph (b):
 - (b-1) In the case of an Employee who is absent on account of an unpaid Excused Absence described in Section 1.16(a), such Employee shall be credited with the Hours of Service such Employee would have earned, not in excess of ten (10) hours for any single day or forty (40) hours during any single week, had he continued in the active employment of the Employer; and
 - (b-2) In the case of an Employee who is absent on account of an unpaid Excused Absence described in Section 1.16(b), such Employee shall be credited with the Hours of Service such Employee would have earned had he continued in the active employment of the Employer.
- (c) For purposes of paragraph (b), a payment shall be deemed to be made by or due from Employer regardless of whether such payment is made by or due from Employer directly, or indirectly through, among others, a trust, fund, or insurer, to which the Employer contributes or pays premiums.

- (d) each hour for which back pay, irrespective of mitigation of damages, has been awarded or agreed to by the Employer. Such hours will be credited to the Computation Period to which the award or agreement pertains, not to include any hours previously credited; and
- (e) solely for the purpose of determining if a One-Year Break in Service has occurred, each hour described in paragraph (f) below.

The definition of Hours of Service for reasons other than the performance of duties and the crediting of Hours of Service to applicable Computation Periods shall be determined in accordance with the Department of Labor Regulation 2530.200b-2 (b) and (c).

- (f) An Employee shall be credited with Hours of Service while employed with the Sponsoring Employer and each other Employer for all purposes of the Plan, while such Employee is employed in a class of Employees eligible to participate in the Plan, without regard to whether such Employers are members of the same Affiliated Group.

Notwithstanding any provision of this Section to the contrary, if an Employee performs service for an Employer or other organization in a job classification not covered by the Plan (“Non-covered Service”) and subsequently performs service in a job classification for an Employer that is covered by the Plan (“Covered Service”), then for purposes of vesting and eligibility to participate, Hours of Service for both Non-covered and Covered Service shall be counted to the extent not otherwise excluded under another provision of the Plan, and provided all of such Service was rendered within the same Affiliated Group.

If an Employee performs Non-covered Service with an Employer or other organization that is a member of one Affiliated Group and subsequently performs Covered Service with an Employer that is a member of a different Affiliated Group, then for purposes of vesting and eligibility to participate, Hours of Service shall not be credited for such Non-covered Service.

- (g) An “Hour of Service” shall be credited, as provided in paragraph (e) above, with regard to maternity or paternity leave, subject to the following:
 - (g-1) only Hours of Service credited during any Plan Year beginning on and after January 1, 1985, due to the following absences shall be considered:
 - (i) the Employee's pregnancy; or
 - (ii) the birth of the Employee's child; or
 - (iii) the placement of a child with the Employee in connection with the adoption of the child (but not the placement of a child in a foster home); or

- (iv) caring for an Employee's child immediately following the child's birth or placement for adoption.
- (g-2) Hours of Service for maternity or paternity leave, other than hours credited under paragraph (b) above, shall only be credited to employees who are in Service at the time the leave commences. If the Plan Administrator is unable to determine hours attributable to the reasons stated in paragraph (g-1) above, no more than ten (10) hours shall be used for each regular workday the Employee is on leave. Such Hours of Service will only be credited for the Computation Period in which the leave commences if the Employee would otherwise incur a Break in Service for that Computation Period. If such Hours of Service are not necessary to prevent a Break in Service during such Computation Period, the hours shall be credited in the subsequent Computation Period. No Hours of Service shall be credited under this paragraph (g) unless the Employee provides the Plan Administrator with a statement from the doctor, or other suitable documentation which the Plan Administrator may reasonably require, confirming the reason and necessity for the leave, within a reasonable period established by the Plan Administrator.
- (g-3) no more than 501 Hours of Service will be credited for any period covered by this paragraph (g), including any Hours of Service credited under paragraph (b) which are attributable to such maternity or paternity leave.
- (h) Except as provided in paragraph (e), above, Hours of Service shall be determined on the basis of actual hours for which an Employee is paid or entitled to payment, provided, when records are not available for tabulating actual hours worked, an Employee shall be credited with forty-five (45) hours for each week in which he is paid, or entitled to be paid, for at least one (1) hour for the performance of duties for the Employer.

1.21 Late Retirement Date

“Late Retirement Date” of a Late Retired Participant shall mean the first day of the month coinciding with or next following the earlier of:

- (a) his retirement from Service; or
- (b) April 1 following the calendar year during which the Participant reaches the later of age 70 ½ or the date on which his vested percentage exceeds 0%, subject to the following exceptions:
 - (b-1) with respect to a Participant who reached age 70 ½ before January 1, 1988, the April 1 following his retirement from Service;

- (b-2) a Participant who reached age 70 ½ on or after January 1, 1988 and who is not a five percent (5%) owner may, before his actual retirement and pursuant to rules established by the Employer, elect to cease distributions (during continued employment) which have commenced, or elect whether to receive (during continued employment) distributions which have not commenced, provided that no such election shall be effective before January 1, 1997;
- (b-3) a Participant who made a distribution selection prior to 1984 under the transitional rules of the Tax Equity and Fiscal Responsibility Act of 1982 may continue to rely on the option selected;
- (b-4) notwithstanding anything in this Section to the contrary, except as otherwise provided in paragraph (b-2) of this Section, a five percent (5%) owner will have a Late Retirement Date no later than the first day of the Plan Year beginning on or after 1984 during which he reaches age 70 ½.

After a Participant reaches his Late Retirement Date, the Participant will be eligible to continue to accrue an additional amount of benefit, in accordance with the provisions of Article 3 of the Plan. Nothing in this Section shall be construed to limit a Participant's right to continued employment after his Late Retirement Date.

1.22 Military Service

“Military Service” means, for reemployment occurring on and after October 13, 1996, a period of interruption of employment of an Employee caused by service in the uniformed services (as defined in Chapter 43 of Title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such Chapter with respect to such service, but only if the individual is reemployed under such Chapter. If, for any reason other than his death, the Employee shall not have returned to employment prior to the expiration of, and in compliance with, the terms and conditions of such reemployment rights, his absence shall be deemed not to have been Military Service and he shall be deemed to have terminated employment by reason of a quit on the last day he was an Employee prior to his service in the uniformed services. As used in this Section, the term “employment” means employment as an Employee, but excluding employment solely by reason of Military Service. Notwithstanding any provision of this Plan to the contrary, effective December 12, 1994, Accrued Benefits, Service, and years of Credited Service with respect to Military Service will be provided in accordance with Section 414(u) of the Code.

1.23 Named Fiduciary

“Named Fiduciary” shall mean the person or persons responsible for reviewing claims for benefits as described in Sections 9.08 and 9.10. In the absence of a contrary designation by the Employer, the Named Fiduciary shall be the Plan Administrator.

1.24 Normal Form

“Normal Form” means a form of benefit providing monthly benefit payments to the Participant for life as of the date the Participant becomes a Retired Participant with a single sum death benefit to be paid to a Beneficiary in accordance with Section 6.01 if the total of all benefit payments made or due to the Retired Participant who was previously an Active Participant in the Prior Plan does not equal or exceed his Participant Accumulation.

1.25 Normal Retirement Age

“Normal Retirement Age” shall mean for a Participant, age sixty-five (65) or, if later, the age of the Participant on the date he begins to participate in the Plan.

1.26 Normal Retirement Date

“Normal Retirement Date” shall mean the first day of the month coinciding with or next following the date a Participant attains Normal Retirement Age. A Participant will become a Retired Participant on his Normal Retirement Date unless he duly elects an Early Retirement Date or continues employment with the Employer and becomes a Late Retired Participant.

1.27 One-Year Break in Service

“One-Year Break in Service” shall mean the applicable Computation Period during which an Employee performs less than 501 Hours of Service. A One-Year Break in Service shall not be deemed to have occurred during any period of Excused Absence if the Employee returns to the service of the Employer within the time permitted pursuant to the provisions of this Plan setting forth the circumstances of Excused Absences.

Notwithstanding anything contained in this Plan to the contrary, effective December 12, 1994, an Employee who is on an Excused Absence due to Military Service will not incur a One-Year Break in Service during or as a result of such leave of absence, to the extent required by Section 414(u) of the Code. Notwithstanding anything contained herein to the contrary, an Employee who is on an Excused Absence pursuant to the Family and Medical Leave Act of 1993 shall not be deemed to have incurred a One-Year Break in Service during or as a result of such leave of absence.

1.28 Participant

“Participant” shall mean any Employee who has satisfied the eligibility requirements of the Plan and who has commenced participation in the Plan in accordance with Article 2.

(a) The term Participant shall included the following classes of Participants:

(a-1) An Active Participant is a participant under the Plan who is in Service and who has not reached his Normal Retirement Date.

- (a-2) A Terminated Participant is a former Active Participant who is not in Service, who is entitled to non-forfeitable benefits under the Plan or a Prior Plan, and who has not become a Retired Participant. A Terminated Participant's rights and benefits under the Plan are restricted to the rights and benefits provided under the Plan or Prior Plan on the date he terminated Service in the Eligible Class, unless the Plan or Prior Plan specifically states otherwise.
- (a-3) A Late Retired Participant is a Participant who remains in Service for the period beginning on his Normal Retirement Date and ending on his Late Retirement Date.
- (a-4) A Retired Participant is a Participant who has retired or otherwise commenced receiving benefits under the Plan or a Prior Plan.
- (b) A person loses his status as a Participant when he dies, when all his retirement benefit has been canceled or when the liability for his Accrued Benefit has been transferred to another defined benefit plan of the Employer.
- (c) To the extent required by a Qualified Domestic Relations Order that meets the requirements of Section 414(p) of the Code, determined without regard to this paragraph (c), an alternate payee shall be treated as a Participant.

1.29 Past Service

“Past Service” shall mean the period of Service rendered by an Employee prior to 1962.

1.30 Payment Starting Date

“Payment Starting Date” shall mean the first day of the first period for which a benefit is paid as an annuity or any other optional form permitted by the Plan.

1.31 Period of Service

“Period of Service” shall mean, for the purpose of determining eligibility for Early Retirement and Years of Credited Service, an applicable period of Service during which such Employee does not incur a Period of Severance.

For purposes of determining eligibility for Early Retirement, a One-Year Period of Service shall be measured by a twelve (12) consecutive month period commencing on an Employee's Employment Commencement Date, Reemployment Commencement Date or an anniversary thereof. A One-Month Period of Service shall be measured by reference to a calendar month. Except, however, a Participant shall be credited with a month of service for each month during the applicable twelve (12) consecutive month period in which he has not incurred a Period of Severance. All Service for which a Participant is credited with Hours of Service under Section 1.20(f) shall be treated as a Period of Service.

Solely for purposes of determining eligibility for Early Retirement (and not for purposes of determining Years of Credited Service), "Period of Service" shall include a Participant's prior service for BWX Technologies, Inc., Honeywell International, Inc., Bechtel National, Inc., or any of their affiliates, which was credited under a qualified pension plan of any of such entities for purposes of eligibility for early retirement thereunder.

1.32 Period of Severance

The period beginning on the date an Employee quits, is discharged, retires or dies. In all other circumstances, the Period of Severance shall begin twelve (12) months after the date the Employee is no longer in Service. If an Employee returns to Service within twelve (12) months after the commencement of a Period of Severance, then such absence from Service shall be disregarded for purposes of determining Years of Credited Service and determining eligibility for Early Retirement.

1.33 Plan

"Plan" shall mean the qualified defined benefit pension plan of the Employer described herein and designated as the B&W Pantex Retirement Plan for Non-Bargaining Employees, as from time to time supplemented and amended.

1.34 Plan Administrator

"Plan Administrator" shall mean Babcock & Wilcox Technical Services Pantex, LLC, known as B&W Pantex.

1.35 Plan Year

"Plan Year" shall mean each twelve-month period beginning on January 1 and ending on the following December 31.

1.36 Prior Plan

The Mason & Hanger-Silas Mason Co., Inc. Retirement Plan For Non-Bargaining Employees At United States Government Owned Plants or the Mason & Hanger-Silas Mason Co., Inc. Retirement Plan for Non-Bargaining Employees at Pantex Plant, as the context may require, which Plans were qualified under Part 1, Subchapter D of Chapter 1 of the Code.

1.37 Qualified Joint and Survivor Annuity

"Qualified Joint and Survivor Annuity" shall mean with respect to a married Participant, annuity payments payable to the Participant for life commencing on the date the Participant becomes a Retired Participant, with an immediate annuity payable upon the death of the Participant to the Participant's surviving spouse for life if such spouse was married to the

Participant on the date the Participant became a Retired Participant. The amount of each retirement benefit payment to the Participant will equal the amount of each benefit payment which would have been payable to the Participant if the Participant duly elected the joint retirement benefit option under Article 4 with fifty percent (50%) continuation to the spouse of the joint payee. Upon the death of the Retired Participant, the amount of each benefit payment to the surviving spouse will equal fifty percent (50%) of the amount of the benefit payable to the Participant immediately prior to the Participant's death.

1.38 Reemployment Commencement Date

“Reemployment Commencement Date” shall mean the first day on which the Employee is entitled to be credited with an Hour of Service after the first Computation Period in which that Employee incurs a One Year Break in Service/Period of Severance following the date an Employee is rehired after having previously incurred a One Year Break in Service/Period of Severance.

1.39 Service

“Service” shall mean employment as an Employee of the Employer. Service will be credited for employment with any Affiliated Company. Service starts on the Employee's Employment Commencement Date and ends on the earlier of (i) the date the Employee terminates employment with the Employer by reason of quit, discharge, retirement, or death; or (ii) the date on which Service is terminated with respect to an Employee who fails to return to active employment at the end of a period of Excused Absence.

To the extent required by Section 414(a) of the Code and any regulations that may be issued thereunder, Service with any predecessor employer will also be included for purposes of vesting and eligibility to participate in the Plan, if the Employer maintains the plan of a predecessor employer. In addition, solely for purposes of determining eligibility for participation, vesting, and eligibility for Early Retirement (and not for purposes of determining Years of Credited Service), “Service” shall include a Participant's prior service for BWX Technologies, Inc., Honeywell International, Inc., Bechtel National, Inc., or any of their affiliates, which was credited under a qualified pension plan of any of such entities for purposes of determining eligibility for participation, vesting, and eligibility for early retirement.

All references to Service in this Plan shall apply effective in Plan Years beginning on and after the first day of the Plan Year commencing during 1976. Service credited before the anniversary of an Employee's Employment Commencement Date which occurred during the first Plan Year beginning during 1976, will be determined under the terms of the Plan as constituted prior to the first day of such 1976 Plan Year and will not be affected by any amendments to the Plan made thereafter.

1.40 Year of Credited Service

“Year of Credited Service” shall mean a twelve-month Period of Service, during which the Participant is employed in the Eligible Class, beginning on the date an Employee becomes an Active Participant in the Plan as determined in Article 2 and anniversaries of such Participant's date of participation in the Plan. A Period of Service ends on the date a Period of Severance begins.

No Participant shall be credited with a Year of Credited Service for Service prior to January 1, 1992.

Provided, however, if a Participant begins a Period of Severance after January 1, 1992 and prior to his anniversary date of participation in the Plan, such Participant shall be credited with a partial Year of Credited Service for Service during the twelve-month period during which such Period of Severance begins as follows. A Participant shall receive one-twelfth (1/12th) of a credit for each completed One-Month Period of Service (measured on the basis of calendar months) during the twelve-month Period of Service in which the Period of Severance begins. If a Period of Severance begins other than on the first day of a month, such Participant shall also be credited with 1/365th of a credit for each completed day of Service completed by the Participant during the month in which such Period of Severance begins.

1.41 Year of Service

“Year of Service” shall mean an applicable twelve-month Computation Period in which the Employee completes 1,000 Hours of Service. Except as otherwise provided in Article 2 and Article 5 of this Plan, all Years of Service with the Employer and any Affiliated Company shall be counted for purposes of eligibility and vesting. In addition, “Year of Service” shall include a Participant's prior service for BWX Technologies, Inc., Honeywell International, Inc., Bechtel National, Inc., or any of their affiliates, which was credited under a qualified pension plan of any of such entities for purposes of eligibility for participation and vesting thereunder. Notwithstanding anything contained herein to the contrary, the Years of Service of an Employee on an Excused Absence due to Military Service shall be determined in accordance with Section 414(u) of the Code.

SPECIAL DEFINITIONS APPLICABLE TO EMPLOYEE CONTRIBUTIONS

1.42 Benefit Attributable to Employer Contributions

The “Benefit Attributable to Employer Contributions” means a retirement benefit payable in the Normal Form commencing at Normal or, if applicable, Late Retirement Date in a yearly amount equal to the greater of paragraph (a) and paragraph (b), minus paragraph (c):

- (a) the total Accrued Benefit credited to the Participant; or
- (b) the Benefit Attributable to Participant Contributions (as defined below)

determined after any adjustments for distributions made under Section 5.03;
minus

- (c) the Benefit Attributable to Participant Contributions.

1.43 Benefit Attributable to Participant Contributions

The “Benefit Attributable to Participant Contributions” determined on or after the first day of the Plan Year beginning in 1988 means a retirement benefit payable in the Normal Form commencing at Normal or, if applicable, Late Retirement Date in a yearly amount equal to paragraph (a) divided by paragraph (b) below, with a death benefit determined under Article 6 of the Plan or Prior Plan.

- (a) The sum of paragraphs (a-1) and (a-2) and (a-3):
 - (a-1) All Participant Contributions; and
 - (a-2) interest at the Plan Interest Rate to the date on which a determination is made; and
 - (a-3) interest on the sum of the amounts in paragraph (a-1) and (a-2), compounded annually from the date of determination to the Participant's Normal or, if applicable, Late Retirement Date, projected:
 - (i) for periods prior to November 1, 1996, at the interest rate which would be used (as of the date of determination) by the Pension Benefit Guaranty Corporation for purposes of valuing a benefit payable as a lump sum from an insufficient trustee single employer plan upon termination; and
 - (ii) for periods on and after November 1, 1996, at the interest rate on 30-year Treasury securities as in effect for the second month preceding the month in which the distribution is made, as published by the Commissioner of Internal Revenue for that month in rulings, notices or other guidance.
- (b) The immediate present value rate, determined using the Normal Form, the Participant's Normal or, if applicable, Late Retirement Date and:
 - (b-1) for periods prior to November 1, 1996, the interest rate which would be used (as of the date of determination) by the Pension Benefit Guaranty Corporation for purposes of valuing a benefit payable as a lump sum from an insufficient trustee single employer plan upon termination; and

- (b-2) for periods on and after November 1, 1996, at the interest rate on thirty 30-year Treasury securities as in effect for the second month preceding the month in which the distribution is made, as published by the Commissioner of Internal Revenue for that month in rulings, notices or other guidance.

The "Benefit Attributable to Participant Contributions" determined before the first day of the Plan Year beginning in 1988 due to distributions of Participant Contributions before such date means the amount determined from the Plan as constituted before such date.

1.44 Participant Accumulation

"Participant Accumulation" means Participant Contributions plus interest thereon, less any refunds thereof made to the Participant or his Beneficiary, at the Plan Interest Rate from the end of the Plan Year during which the contribution was made to the earliest of:

- (a) the Participant's Retirement Date; or
- (b) the first day of the month in which a refund of the Participant Accumulation is made to the Participant; or
- (c) the first day of the month in which a payment occurs due to the death of a Participant.

1.45 Participant Contributions

Prior to October 1, 1991, Participants were required to contribute to the Prior Plan as a condition to accruing benefits under such Plan. On and after January 1, 1992, Participant Contributions will not be required or permitted. Any Participant Contributions made prior to January 1, 1992 to the Prior Plan will continue to be administered in accordance with the Plan.

1.46 Plan Interest Rate

"Plan Interest Rate" shall mean the interest factor for crediting interest to Participant Accumulations and for determining, in part, the Benefit Attributable to Employee Contributions, compounded annually, which rate shall be as follows:

- (a) Two and one-half percent (2.5%) per annum for years prior to January 1, 1976;
- (b) Five percent (5%) per annum for Plan Years beginning on and after January 1, 1976 and before January 1, 1988;

- (c) 120% of the Federal mid-term rate as in effect under Section 1274 of the Code for the first month of each Plan Year beginning on and after January 1, 1988.

ARTICLE 2 - ELIGIBILITY

2.01 Eligibility Requirements

- (a) An Employee employed in the Eligible Class who is an Active Participant of the Plan immediately before the Effective Date will remain an Active Participant of the Plan on the Effective Date subject to the terms of the Plan.
- (b) Each other Employee in Service on the Effective Date, will become an Active Participant on such date if he then meets each of the following requirements:
 - (b-1) he is in the Eligible Class;
 - (b-2) he has completed one (1) Year of Service; and
 - (b-3) for Plan Years prior to January 1, 2002, he is at least age 21.
- (c) An Employee in Service on the Effective Date who does not then become an Active Participant, or an Employee entering Service after such date, will become an Active Participant on the first day of the month coinciding with or following the date he meets each of the following requirements:
 - (c-1) he is in the Eligible Class; and
 - (c-2) he has completed one (1) Year of Service.
 - (c-3) for Plan Years prior to January 1, 2002, he is at least age 21.
- (d) The Participant's initial date of participation in the Plan shall be determined for purposes of benefit accrual under the provisions of this Article without regard to the Participant's date of participation in a Prior Plan before January 1, 1992.

2.02 Participation Upon Reemployment

An Employee who terminates employment with the Employer and subsequently returns to Service in the Eligible Class will become a Participant as of his date of reemployment in the Eligible Class.

Any Year of Service which would have been excluded if the Employee had returned to Service prior to the first day of the Plan Year beginning after December 31, 1984, in accordance with the Prior Plan as constituted immediately before such date, shall be excluded for all purposes thereafter, including any future application of this Section.

An employee who terminated employment with the Employer before the first day of the first Plan Year beginning in 1976, or an employee returning after termination who does not meet the conditions of this section must meet the requirements of paragraph 2.01(c) above before again becoming an Active Participant.

ARTICLE 3 - CONTRIBUTIONS AND RETIREMENT AND DISABILITY BENEFITS

3.01 Eligibility for Retirement Benefits

Non-Forfeitable benefit payments will be made monthly in an amount equal to one-twelfth (1/12) of the annual benefit payable under the applicable form of distribution. Such payment will commence when a Participant becomes a Retired Participant, which will be on the Participant's Normal Retirement Date or, if applicable, on his duly elected Early Retirement Date or his Late Retirement Date. A Participant may elect to receive his benefit payments under any one of the forms described in Article 4.

3.02 Amount of Benefit at Normal Retirement

- (a) The annual amount of retirement benefit, payable in the Normal Form, to be provided for a Participant who has Service in the Eligible Class on and after the Effective Date, who retires from Service on his Normal Retirement Date will equal to the sum of paragraphs (a-1) and (a-2) as follows:
 - (a-1) For Service in the Eligible Class on and after October 1, 1991:

One and three-tenths (1.3%) percent of the Participant's Final Average Earnings multiplied by the Participant's Years of Credited Service.
 - (a-2) For Service while the Participant was an Active Participant in the Prior Plan prior to October 1, 1991, paragraph (i) plus paragraph (ii):
 - (i) Two and one-half percent (2 1/2%) of such Participant's "earnings" (as defined in the Prior Plan) for the period on and after January 1, 1962 during which such Participant made Participant Contributions to the Prior Plan; plus
 - (ii) The "Past Service Benefit Credit," as defined and determined under the Prior Plan immediately prior to January 1, 1992.
- (b) Participants who terminated employment with the Employer on or before the Effective Date shall be entitled to a benefit from the Plan equal to the amount determined under the Prior Plan.

3.03 Amount of Benefit at Late Retirement Date

A Participant who completes at least one (1) Hour of Service on or after January 1, 1988 shall be entitled to accrue additional benefits under the Plan for Service in the Eligible Class following the Participant's Normal Retirement Date, subject to the requirement that such Participant makes his Participant Contributions to the Prior Plan for Service prior to October 1, 1991. The annual amount of retirement benefit, payable in the Normal Form to such Participant who becomes a Retired Participant on a Late Retirement Date, will equal the amount accrued to such Participant determined under Section 3.02 using Earnings and Service as of such Participant's Late Retirement Date. Provided, however, the annual benefit payable to such Participant shall not be less than the annual benefit which would have been paid to the Participant if he had become a Retired Participant on his Normal Retirement Date, increased by one-half of one percent (1/2%) for each month by which the Participant's Normal Retirement Date precedes such Participant's Late Retirement Date.

If such Participant has no Service after the first day of the Plan Year beginning in 1988, his benefit will be calculated in accordance with the provisions of the Prior Plan in effect on the date he terminated Service.

3.04 Additional Amount of Benefit Accrued After Late Retirement Date

A Retired Participant may accrue additional amounts of retirement benefit for Service in the Eligible Class after his Late Retirement Date. Notwithstanding any provision in the Plan to the contrary, such additional benefit accrual shall be payable to the Participant in the same form of payment in effect on the Participant's Late Retirement Date commencing on the first day of the Plan Year following the Plan Year during which such additional benefit was accrued. The yearly amount of additional benefit determined each year will equal the amount accrued to the Participant under Section 3.02 entitled "Amount of Benefit at Normal Retirement" using his Earnings and Service as if the Participant had not yet reached such date, subject to the following:

- (a) the yearly benefit is calculated to the last day of each Plan Year following his Late Retirement Date or, if earlier, the Participant's actual termination of Service in the Eligible Class;
- (b) the yearly amount accrued to the Participant to the last day of the prior Plan Year or, if later, the Participant's Late Retirement Date, is subtracted;
- (c) the difference in the yearly benefit is adjusted for the form of payment in effect on the Participant's Late Retirement Date, if other than the Normal Form;
- (d) the yearly amount is divided by twelve (12) to obtain the monthly amount of benefit.

3.05 Amount of Benefit at Early Retirement

Each Active or Terminated Participant who has attained his Early Retirement Date shall, upon termination of Service (for reasons other than death or Disability), be entitled to a pension benefit payable in the Normal Form, in an amount equal to the amount determined under Section 3.02 using Earnings and Service as of the Participant's Early Retirement Date, reduced by two and one-half percent (2 1/2%) for each year by which the Participant's Early Retirement Date precedes the Participant's Normal Retirement Date.

3.06 Amount of Benefit at Retirement for a Terminated Participant

A retirement benefit will be provided for a Terminated Participant who becomes a Retired Participant on his Normal Retirement Date or a duly elected Early Retirement Date.

Such retirement benefit will be in the same amount the Participant would have received had he reached his Retirement Date on the date he terminated, subject to the provisions of Article 5 and using Earnings and Service in the Eligible Class to the Participant's date of termination.

3.07 Maximum Benefit

Effective as of the first day of the Plan Year beginning in 1987, the maximum yearly pension benefit to which a Retired Participant will be entitled, when combined with the benefits to which he is entitled under any other qualified defined benefit plan maintained by the Employer or any Affiliated Company, shall not exceed the maximum benefit permissible under Section 415 of the Code (taking into account for Plan Years and Limitation Years beginning on or after January 1, 2002, Section 611 of the Economic Growth and Tax Relief Reconciliation Act of 2001 and taking into account for Plan Years and Limitation Years beginning on or after January 1, 2008, the final regulations of Section 415 of the Code), as described in the following paragraphs. If the benefit a Participant would otherwise accrue in a Limitation Year would produce an annual pension benefit in excess of the maximum benefit permissible under Section 415 of the Code, then the benefit shall be limited or the rate of accrual reduced to a benefit that does not exceed the maximum benefit permissible. If the Participant is, or has ever been, a Participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Employer or a "Predecessor Employer" (as defined in the Section 415 Regulations), the sum of the Participant's maximum yearly pension benefit from all such plans may not exceed the maximum benefit permissible under Section 415 of the Code. Where the Participant's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the maximum benefit permissible under Section 415 of the Code applicable at that age, the Employer shall limit a Participant's benefit in accordance with Section 3.07.

(a) For the purposes of this Section only, the following definitions apply:

- (a-1) "Adjustment Factor" means the cost of living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code for years beginning after December 31, 1987, applied to such paragraphs and in such manner as the Secretary shall prescribe. Any prescribed change to the Adjustment Factor shall apply to the Limitation Year that ends with or within the calendar year during which the prescribed change occurs.
- (a-2) "Affiliated Company" means the Employer and any corporation which is a member of a controlled group of corporations, as defined in Section 414(b) of the Code, which includes the Employer; any trade or business (whether or not incorporated) which is under common control, as defined in Section 414(c) of the Code with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group, as defined in Section 414(m) of the Code, which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to regulations under Section 414(o) of the Code. Provided, however, for purposes of determining the maximum permissible benefit that may be provided by this Plan and all other Plans of the Employer and Affiliated Companies in accordance with Section 415 of the Code, Affiliated Company shall be defined as above, except that the provisions of Sections 414(b) and 414(c) of the Code shall be modified as required by Section 415(h) of the Code.
- (a-3) "Annual Addition" means the amount allocated to the Participant's account during the Limitation Year that constitutes:
- (i) Employer contributions,
 - (ii) Employee contributions, inclusive of Participant Contributions,
 - (iii) forfeitures, and
 - (iv) amounts described in Sections 415(l)(1) and 419A(d)(2) of the Code.
- (a-4) For Plan Years beginning after December 31, 1997, "Compensation" means Section 3401(a) wages paid by the Employer to the Participant during the Limitation Year which is defined as wages in Section 3401(a) of the Code for the purposes of income tax withholding at the source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Code). "Compensation" shall be increased for salary reduction amounts which are excluded from the taxable income of an Employee under Section 125, 132(f)(4), 401(k), 402(h), 403(b), 408 and 457 of the Code. Compensation shall also include regular pay after severance of employment to the extent such amounts are paid by the later of 2 ½ months after severance from employment or by the end of the Limitation Year that includes the date of

such severance from employment if (i) the payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and (ii) the payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer. Any other payment of compensation paid after severance of employment is not considered Compensation even if payment is made within the time period specified above. Compensation for a Plan Year or a Limitation Year shall not include amounts earned but not paid during the Plan Year or Limitation Year solely because of the timing of pay periods and pay dates. Compensation for a Plan Year or Limitation Year shall not include earnings or compensation in excess of the limitation under Section 401(a)(17) of the Code in effect for such year.

Effective for Plan Years and Limitation Years beginning on and after January 1, 1998, for purposes of the definition of 'Compensation' hereunder, amounts under Section 125 of the Code include any amounts not available to a Participant in lieu of group health plan coverage because the Participant is unable to certify that he or she has other health coverage ('Deemed Section 125 Compensation'). An amount will be treated as an amount under Section 125 of the Code only if the Employer does not request or collect information regarding the participants' other health coverage as part of the enrollment process for the health plan.

- (a-5) "Current Accrued Benefit" means a Participant's Accrued Benefit under the Plan, determined as if the Participant had separated from Service as of the close of the last Limitation Year beginning before January 1, 1987, when expressed as an annual benefit within the meaning of Section 415(b)(2) of the Code. In determining the amount of a Participant's Current Accrued Benefit, the following shall be disregarded:
 - (i) any change in the terms and conditions of the Plan or Prior Plan after May 5, 1986; and
 - (ii) any cost of living adjustment occurring after May 5, 1986.
- (a-6) "Defined Benefit Dollar Limitation" means the limitation set forth in Section 415(b)(1) of the Code, increased by the Adjustment Factor.
- (a-7) "Defined Benefit Plan Fraction" means a fraction, described under Section 415(e)(2) of the Code, determined for each Limitation Year prior to January 1, 2000 for each Participant.
- (a-8) For Plan Years beginning after December 31, 1994, "Defined Contribution Dollar Limitation" means \$30,000 adjusted annually as provided in Code

Section 415(d) pursuant to Treasury Department regulations. The adjusted limitation is effective as of January 1 of each calendar year and is applicable to Limitation Years ending with or within that calendar year.

- (a-9) "Defined Contribution Plan Fraction" means, for Limitation Years prior to January 1, 2000, a fraction, described under Section 415(e)(3) of the Code and subject to special transition rules, if applicable, set forth in Section 415(e)(4) and (6) of the Code.
 - (a-10) "Participant Contributions" means non-deductible contributions to the Plan made by a Participant during the Plan Year that are not allocated to a separate Plan account.
 - (a-11) "Limitation Year" means the Plan Year. The Limitation Year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year.
 - (a-12) "Social Security Retirement Age" means the age used as the retirement age for the Participant under Section 216(l) of the Social Security Act, except that such Section will be applied without regard to the age increase factor, and as if the early retirement age under Section 216(l)(2) of such Act were sixty-two (62).
 - (a-13) any defined term not described above is defined elsewhere in the Plan, if applicable.
- (b) Subject to the adjustments described by paragraph (c) below, the maximum yearly pension benefit to which a Retired Participant will be entitled is the sum of the Benefit Attributable to Participant Contributions and maximum Benefit Attributable to Employer Contributions. The determination of the maximum yearly pension benefit to which a Retired Participant will be entitled shall take into account Social Security supplements described in Section 411(a)(9) of the Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Regulations Section 1.411(d)-4, Q&A-3(c), but shall disregard benefits attributable to Employee contributions or rollover contributions. The maximum Benefit Attributable to Employer Contributions shall be the lesser of the Defined Benefit Dollar Limitation or 100% of a Participant's average annual compensation by the Employer during the three (3) consecutive Years of Service (or if the Participant has less than three consecutive Years of Service, the Participant's longest consecutive period of Service, including fractions of years, but not less than one year) of the Participant's highest Compensation ("Participant's High Three Year Average Compensation"), payable in the form of a single life annuity.

In the case of a Participant who is rehired by the Employer after a severance from employment, the Participant's High Three-Year Average Compensation shall be calculated by excluding all years for which the Participant performs no services for and receives no Compensation from the Employer (the break period) and by treating the years immediately preceding and following the break period as consecutive.

A Participant's maximum yearly pension benefit shall be determined on his Payment Starting Date. If the Participant remains in Service following such date, his maximum yearly pension benefit shall be adjusted on the first day of each Plan Year until his retirement from Service, with respect to future payments, to the lesser of:

- (b-1) the lesser of the current year's Defined Benefit Dollar Limitation or the Participant's High Three Year Average, as adjusted by paragraph (c-2) below; or
 - (b-2) the Participant's retirement benefit determined without regard to any limitations in this Section entitled "Maximum Benefit."
- (c) The maximum yearly pension benefit will be adjusted, if applicable, by the following paragraphs:
- (c-1) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62:
 - (i) Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a single life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 3.07(c-4) for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate assumption under the Plan and the mortality table set forth in Section 4.05(b); or (2) a five-percent (5%) interest rate assumption and the mortality table set forth in Section 4.05(b).
 - (ii) "Limitation Years" Beginning on or After July 1, 2007.
 - (a) Plan Does Not Have Immediately Commencing Single Life Annuity" Payable at both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing single life

annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a single life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 3.07(c-4) for years of participation less than ten (10), if required) with actuarial equivalence computed using a five-percent (5%) interest rate assumption and the mortality table set forth in Section 4.05(b) (and expressing the Participant's age based on completed calendar months as of the annuity starting date).

- (b) Plan Has Immediately Commencing Single Life Annuity Payable at both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing single life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's annuity starting date is the lesser of the limitation determined under Section 3.07(c-1)(ii)(a) and the Defined Benefit Dollar Limitation (adjusted under Section 3.07(c-4) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing single life annuity under the Plan at the Participant's annuity starting date to the annual amount of the immediately commencing single life annuity under the Plan at age 62, both determined without applying the limitations of Section 3.07.

(c-2) Adjustment of "Defined Benefit Dollar Limitation" for Benefit Commencement After Age 65:

- (i) Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a single life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 3.07(c-4) for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate assumption under the Plan and the mortality table set

forth in Section 4.05(b); or (2) a five-percent (5%) interest rate assumption and the mortality table set forth in Section 4.05(b).

- (ii) "Limitation Years" Beginning Before July 1, 2007.
 - (a) Plan Does Not Have Immediately Commencing Single Life Annuity Payable at both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing single life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's annuity starting date is the annual amount of a benefit payable in the form of a single life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 3.07(c-4) for years of participation less than 10, if required), with actuarial equivalence computed using a 5% interest rate assumption and the mortality table set forth in Section 4.05(b) (and expressing the Participant's age based on completed calendar months as of the annuity starting date).
 - (b) Plan Has Immediately Commencing Single Life Annuity Payable at both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan has an immediately commencing single life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's annuity starting date is the lesser of the limitation determined under Section 3.07(c-1)(ii)(a) and the Defined Benefit Dollar Limitation (adjusted under Section 3.07(c-4) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing single life annuity under the Plan at the Participant's annuity starting date to the annual amount of the adjusted immediately commencing single life annuity under the Plan at age 65, both determined without applying the limitations of Section 3.07. For this purpose, the adjusted immediately commencing single life annuity under the Plan at the Participant's annuity starting date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the

adjusted immediately commencing single life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

- (iii) Notwithstanding the other requirements of this Sections 3.07, no adjustment shall be made to the Defined Benefit Dollar Limitation to reflect the probability of a Participant's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Section 417(c) of the Code, upon the Participant's death.
- (c-3) If the pension benefit of a Participant does not exceed \$10,000, as provided in Section 415(b)(4) of the Code, as adjusted by paragraph (c-5) below, and for Limitation Years prior to January 1, 2000, the Participant has never been a Participant in any defined contribution plan maintained by the Employer or any Affiliated Company, the Defined Benefit Limitation and the limitation described by Section 415(b)(1)(B) of the Code shall be deemed satisfied.
- (c-4) If the Participant has completed less than ten (10) years of participation, the Accrued Benefit Attributable to Employer Contributions will not exceed the Defined Benefit Dollar Limitation as adjusted by multiplying such amount by a fraction, the numerator of which is the Participant's number of years (or part thereof) of participation in the Plan, and the denominator of which is ten (10).
- (c-5) If the Participant has completed less than ten (10) years of service with the Employer or any Affiliated Companies, the limitations described in Section 415(b)(1)(B) & (b)(4) of the Code and, for Limitation Years prior to January 1, 2000, Section 415(e) of the Code, will be adjusted by multiplying such amounts by a fraction, the numerator of which is the Participant's number of years of service (or part thereof) and the denominator of which is ten (10).
- (c-6) If the pension benefit of a Participant is payable in a form other than a single life annuity, such benefit attributable to Employer Contributions will not exceed the actuarial equivalent of the limitation for a single life annuity described as set forth in Section 3.07(i). No actuarial adjustment to the benefit shall be made for (i) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Participant's benefit were paid in another form; (ii)

benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or (iii) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Code and would otherwise satisfy the limitations of Section 3.07, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of Section 3.07 applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

- (d) In no event shall paragraphs (c-3) or (c-4) above reduce the limitations provided under Sections 415(b)(1)(B) and (b)(4) of the Code to an amount less than one-tenth (1/10) of the applicable limitation, as determined without regard to paragraphs (c-3) or (c-4).
- (e) To the extent provided by the Secretary of the Treasury, paragraphs (c) and (d) above will be applied separately with respect to each change in the benefit structure of the Plan.
- (f) If the Current Accrued Benefit of an individual who is a Participant as of the first day of the Limitation Year beginning on or after January 1, 1987, exceeds the benefit limitations under Section 415(b) of the Code, as modified by paragraphs (b), (c) and (d) above, then, for purposes of Code Section 415(b) and (c), the Defined Benefit Dollar Limitation with respect to such individual will be equal to such Current Accrued Benefit. The preceding sentence shall only apply if this Plan was in existence on May 6, 1986, and met the applicable requirements of Section 415 of the Code as in effect for all Limitation Years.

The application of the provisions of Section 3.07 shall not cause the maximum benefit permissible for any Participant to be less than the Participant's Accrued Benefit under all the defined benefit plans of the Employer or a "Predecessor Employer" as of the end of the last Limitation Year beginning before January 1, 2008 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, Regulations, and other published guidance relating to Section 415 of the Code in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in Regulations Section 1.415(a)-1(g)(4).

- (g) For Limitation Years prior to January 1, 2000, the maximum Annual Addition that may be contributed or allocated to the Participant's account under the Plan for any Limitation Year will not exceed the lesser of:

- (g-1) the Defined Contribution Dollar Limitation; or
- (g-2) twenty-five percent (25%) of the Participant's compensation, within the meaning of Section 415(c)(3) of the Code, for the Limitation Year. Such compensation limitation will not apply to:
 - (i) any contribution for medical benefits within the meaning of Section 419A(f)(2) of the Code, after separation from service which is otherwise treated as an Annual Addition; or
 - (ii) any amount otherwise treated as an Annual Addition under Section 415(l)(1) of the Code.
- (h) For Limitation Years prior to January 1, 2000, in the event any Participant is also a Participant in a defined contribution plan maintained by the Employer or an Affiliated Company, the following paragraphs will apply:
 - (h-1) the Annual Addition for any Limitation Year beginning before January 1, 1987 will not be recomputed to treat all Employee contributions as an Annual Addition; and
 - (h-2) the sum of the Defined Contribution Plan Fraction and the Defined Benefit Plan Fraction shall not exceed 1.0 for any Limitation Year, determined with regard to the adjustments set forth in this paragraph (h); and
 - (h-3) for any individual who is a Participant as of the first day of the Limitation Year beginning on or after January 1, 1987 but prior to January 1, 2000, an amount will be subtracted from the numerator of the Defined Contribution Plan Fraction (not exceeding such numerator) as prescribed by the Secretary of the Treasury so that the sum of the Defined Benefit Plan Fraction and Defined Contribution Plan Fraction computed under Section 415(e)(1) of the Code, as revised by this paragraph (h), does not exceed 1.0 for such Limitation Year. The preceding sentence shall only apply if this Plan was in existence on May 6, 1986, and met the applicable requirements of Section 415 of the Code as in effect for all Limitation Years.

Where, but for this provision, the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction would exceed 1.0 for Limitation Years prior to January 1, 2000, the annual benefit under this Plan for the Plan Year shall be limited to the extent necessary under Federal regulations to preclude the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction from exceeding 1.0.

- (i) Except as otherwise provided herein, effective for distributions in Plan Years beginning after December 31, 2003, the required determination of actuarial

equivalence of forms of benefit other than a single life annuity shall be made in accordance with this Section.

- (i-1) Definition of "Applicable Mortality Table." The "applicable mortality table" means the mortality table set forth in Section 4.05(b) for the annuity starting date.
- (i-2) Benefit Forms Not Subject to the Present Value Rules of Code Section 417(e)(3).
 - (i) Form of benefit. The single life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Section 3.07(i)(i-2) if the form of the Participant's benefit is either:
 - (a) A nondecreasing annuity (other than a single life annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or
 - (b) An annuity that decreases during the life of the Participant merely because of:
 - (1) The death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or
 - (2) The cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).
 - (ii) Limitation Years beginning before July 1, 2007. For Limitation Years beginning before July 1, 2007, the actuarially equivalent single life annuity is equal to the annual amount of the single life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount:
 - (a) the interest rate assumption under the Plan and the applicable mortality table; and
 - (b) a 5 percent interest rate assumption and the applicable mortality table.
 - (iii) Limitation Years beginning on or after July 1, 2007. For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent single life annuity is equal to the greater of:

- (a) The annual amount of the single life annuity (if any) payable to the Participant under the Plan commencing at the same annuity starting date as the Participant's form of benefit; and
 - (b) The annual amount of the single life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table.
- (i-3) **Benefit Forms Subject to the Present Value Rules of Code Section 417(e)(3).**
- (i) **Form of benefit.** The single life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined as indicated under this Section (i-3) if the form of the Participant's benefit is other than a benefit form described in Section 3.07(i)(i-2)(i).
 - (ii) **Annuity Starting Date in Plan Years Beginning After 2005.** If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning after December 31, 2005, the actuarially equivalent single life annuity is equal to the greatest of:
 - (a) The annual amount of the single life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate assumption under the Plan and the applicable mortality table;
 - (b) The annual amount of the single life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table; and
 - (c) The annual amount of the single life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate for the distribution under Regulations Section 1.417(e)-1(d)(3) (determined in accordance with Section 4.05(b) for Plan Years after the effective date of that Section) and the applicable mortality table, divided by 1.05.
 - (iii) **Annuity Starting Date in Plan Years Beginning in 2004 or 2005.** If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent single life annuity is equal to the annual amount of the single life annuity

commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount:

- (a) The interest rate assumption under the Plan and the applicable mortality table; and
- (b) A 5.5 percent interest rate assumption and the applicable mortality table.

3.08 Disability Benefits

- (a) Each Participant who suffers a Disability while employed in the Eligible Class prior to September 1, 1996 and after attainment of age 45 shall be entitled to a Disability benefit effective as of the date set forth in subparagraph (b) hereof in an amount equal to the Participant's Accrued Benefit accrued through date that the Participant is entitled to commence payments of Disability benefits.
- (b) Disability payments shall be payable during the period beginning on the first day of the month coinciding with or next following the date of certification of Disability by the Employer and ending immediately before the earliest date of:
 - (b-1) the date the Participant ceases to be Disabled by death or recovery;
 - (b-2) the date the Participant fails to submit satisfactory proof of the continuance of the Disability;
 - (b-3) the Participant's Normal Retirement Date or, if elected, the Participant's Early Retirement Date.
- (c) The Employer shall not certify a Participant as being Disabled, nor shall the Participant be entitled to the payment of Disability benefits until such time as (i) the Participant has exhausted and received all employer provided income replacement benefits such as worker's compensation, sickness and accident payment benefits, short term disability, long term disability, vacation pay, sick pay or salary continuation benefits, and (ii) not earlier than six (6) months following the date of the illness, injury or disease giving rise to the Disability.

3.09 Disability Determination

The Determination of a Disability shall be made by the Employer, in its sole and absolute discretion, subject to the following:

- (a) The Employer shall be entitled to require physical examinations, including diagnostic tests, of the Participant made by a physician or physicians selected and paid for by the Employer and to make such other investigations as the Employer deems necessary. If the Participant refuses to permit any such physical examination or test, unless the examination or test is shown to be dangerous to the Participant's life or health, the Employer shall have the right to determine without regard to any other evidence that the Participant is not Disabled.
- (b) Any such determination by the Employer shall be conclusive and binding upon all persons one year after the determination is made, if the Employer does not receive during such one-year period written notice of claim that such determination was in error.
- (c) A Participant who is receiving Disability payments may be required to submit proof to the Employer of the continuance of the Disability once every six (6) months and shall, as required by the Employer, permit once every six (6) months a physical examination or examinations, including diagnostic tests, made by a physician or physicians selected and paid for by the Employer. If a Participant refuses to permit such physical examination or test, unless the examination or test is shown to be dangerous to the Participant's life or health, the Employer shall have the right to determine, without regard to any other evidence, that the Participant is no longer permanently and totally disabled.
- (d) A Participant who is receiving Disability payments will be considered an Active Participant for all purposes of this Plan except that no Participant Contributions will be made and no retirement benefit will accrue for any period of a Plan Year for which Disability payments are payable to him.
- (e) A Participant who becomes eligible for Disability payments will have a non-forfeitable interest in 100% of the total Accrued Benefit which had accrued to the Participant as of the date of Disability certification.
- (f) If a Participant is receiving Disability payments immediately before the Participant's Normal or Early Retirement Date, a retirement Benefit will be provided for the Participant under the Normal or Early Retirement provisions of the Plan.

3.10 Transferred Benefits

Effective as of February 17, 2003, the liability for the Accrued Benefits of Non-Bargaining Firefighters (described in Section 1.12) who are Participants under this Plan on February 17,

2003 shall be transferred to and assumed by the Retirement Plan for Bargaining Unit Employees of the Metal Trades Council of BWXT Pantex (the 'Metal Trades Plan'). Related funds shall be transferred to the funding arrangement used by the Metal Trades Plan.

Effective as of February 17, 2003, this Plan shall have no further liability with respect to said transferred Accrued Benefits

ARTICLE 4 - METHOD AND TIMING OF PLAN BENEFIT DISTRIBUTIONS

4.01 Time and Duration of Retirement and Death Benefit Payment

- (a) Unless a Participant elects otherwise, monthly retirement benefit payments to a Participant will begin as of the date a Participant becomes retired under the Plan. Provided, however, unless a Participant elects otherwise, in no event will such payments commence any later than the sixtieth (60th) day after the close of the Plan Year in which the latest of the following occurs:
- (a-1) the date on which the Participant attains Normal Retirement Age;
 - (a-2) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan;
 - (a-3) the date the Participant terminates his Service with the Employer.

The monthly amount of each such benefit payment will equal one-twelfth (1/12) of the yearly amount of retirement benefit provided for the Participant on the date he became a Retired Participant. Benefit payments to any other payee will begin on the date such payee becomes entitled to a benefit as determined in accordance with the provisions of this Plan. Benefit payments will cease with the payment due immediately before the person's death, or, if earlier, the end of the term of payment.

- (b) Except as otherwise required by this Article, the Death Benefit payable to a surviving spouse or Beneficiary of a deceased Participant shall be paid at such time or times as specifically set forth and subject to any restrictions in Article 6.

4.02 Required Beginning Date

In no event shall commencement of payments to the Participant be deferred beyond April 1 of the calendar year following the later of the calendar year in which a Participant attains 70-1/2 or the calendar year in which he retires (the "Required Beginning Date"). The Required Beginning Date of a Participant who is a five percent (5%) owner (as defined in Section 416 of the Code) shall be the April 1 of the calendar year following the calendar year in which he attains age 70-1/2.

All distributions made under the Plan shall be determined and made in accordance with Section 401(a)(9) of the Code including the incidental death benefit requirement in Section 401(a)(9)(b) of the Code and in accordance with the final regulations under Section 4.01(a)(9) of the Code that were issued on April 17, 2002 and the provisions of Section 4.07.

4.03 Required Form of Benefit Payment

Except as provided in Section 4.05 entitled "Small Benefit Payments," benefits shall be distributed to Retired Participants in accordance with the following:

- (a) For a Participant who is married on the date he becomes a Retired Participant, retirement benefit payments will be paid to the Participant in the form of a Qualified Joint and Survivor Annuity. Provided, however, such Participant may waive the Qualified Joint and Survivor Annuity form of payment and elect an alternative benefit payment option described in this Article by making a written election on a form and during the period described in Section 4.04 entitled "General Election Requirements."
- (b) For a Participant who is not married on the date he becomes a Retired Participant, retirement benefit payments will be paid to the Participant in the Normal Form. Provided, however, such Participant may elect to have retirement benefits paid to him in an alternative benefit payment option described in this Article by making a written election on a form and during the period described in Section 4.04 entitled "General Election Requirements."
- (c) In the event a Participant dies before becoming a Retired Participant, the spouse of such Participant may become eligible for benefits in accordance with the Section entitled "Spouse's Coverage" in Article 6.

4.04 General Election Requirements

(a) Benefit Payment Elections

Subject to the limitations of Section 4.07 entitled "Minimum Required Distributions," a Participant may elect to become a Retired Participant and commence receiving retirement benefits in the required form of payment described in Section 4.03 or an alternative benefit payment option described in Section 4.06 by filling out and filing the appropriate election form with the Plan Administrator during the ninety (90) day period ending on the Payment Starting Date.

A married Participant may elect an optional form of payment other than a Qualified Joint and Survivor Annuity provided the Participant's spouse consents in writing to such election and such consent is witnessed by a representative of the Plan Administrator or notary public. Such consent shall be binding only with respect to the spouse executing the consent. Such consent must acknowledge the effect of the election on the spouse and such consent may not be revoked by the spouse. The requirement for such a written consent may be waived if it is established to the sole satisfaction of the Plan Administrator that such spouse cannot be located or is otherwise unable to give such consent under circumstances authorized by regulation. A married Participant may elect payment of retirement benefits in the form of a Qualified Joint and Survivor Annuity without the consent of his spouse.

The election of an optional form of payment becomes void and the rights of all parties will be the same as if the option had never been elected under the following circumstances:

- (i) the Participant is married and dies before the Payment Starting Date; or
 - (ii) the Participant is unmarried and dies before the Payment Starting Date; or
 - (iii) the Participant duly elected the joint retirement benefit option and his joint payee dies before the Payment Starting Date; or
 - (iv) the Participant revokes the election of an option before the Payment Starting Date.
- (b) At any time, during the ninety-day period ending on the Payment Starting Date, the Participant may revoke any prior benefit payment election which has been filed with the Plan Administrator, without the consent of the Participant's spouse (if any) by filing a written revocation with the Plan Administrator. Except as provided in the preceding sentence a married Participant may not subsequently change a benefit payment election, including the naming of any non-spouse Beneficiary without again obtaining the consent of his spouse in accordance with the procedures described in paragraph 4.04(a). In no event may a benefit payment election be changed or revoked by any Participant on or after the Payment Starting Date.
- (c) The Plan Administrator shall provide a general explanation to each Participant, in writing no more than ninety (90) days (270 days for Participants who perform no Service for the Employer on or after the first day of the Plan Year beginning after December 31, 1984) and no less than (thirty) 30 days before the Payment Starting Date, of the Participant's right to elect a form of benefit other than a Qualified Joint and Survivor Annuity, with respect to a married Participant or a benefit payable in the Normal Form, with respect to all other Participants. The explanation will generally provide a written description in non-technical language of the terms and conditions of the Qualified Joint and Survivor Annuity to be provided by this Plan; the Participant's right to elect to waive the Qualified Joint and Survivor Annuity; the effect of such a waiver election; the circumstances requiring the written consent of the spouse for such waiver election to be effective; the Participant's right to revoke such an election; and the effect of such a revocation. Notices to Participants shall include the relative values of the various optional forms of benefit, if any, under the Plan as provided in Regulations Section 1.417(a)-3. This provision is effective as of the applicable effective date set forth in Regulations (i.e., to qualified pre-retirement survivor annuity explanations provided on or after July 1, 2004; to qualified joint and survivor annuity explanations with respect to any distribution with an annuity starting date that is on or after February 1, 2006, or on or after October 2, 2004 with respect to any optional form of benefit that is subject to the requirements of Code Section 417(e)(3) if the actuarial present value of that optional form is less than the

actuarial present value as determined under Code Section 417(e)(3)). Notices given to Participants pursuant to Code Section 411(a)(11) in Plan Years beginning after December 31, 2006 shall include a description of how much larger benefits will be if the commencement of distributions is deferred.

- (d) In the event that the Participant (and Spouse, if required) elect a Payment Starting Date that is less than 30 days from the receipt of the written explanation described above, or the Plan Administrator inadvertently provides the explanation after the time frame described above, this paragraph shall apply. For purposes of this subsection, "Retroactive Annuity Starting Date" is an annuity starting date that occurs on or before the date the explanation of the form of benefit payment described above is provided to the Participant. The Plan Administrator may, in accordance with reasonable procedures that it establishes, impose conditions on the availability of a Retroactive Annuity Starting Date in addition to those imposed by the paragraph, including limiting the availability of a Retroactive Annuity Starting Date to a date within a certain specified period before the date on which the explanation of the form of benefit is provided. If a Participant is subject to a Retroactive Annuity Starting Date, his future periodic payments shall be the same as the future periodic payments, if any, which would have been paid with respect to the Participant had payments actually commenced on the Retroactive Annuity Starting Date. The Participant shall also be entitled to make-up payment to reflect any missed payment or payments from the Retroactive Annuity Starting Date to the date of the actual make-up payment (with an appropriate adjustment for interest from the date the missed payment or payments would have been made to the date of the actual make-up payment). A Participant shall not be permitted to elect a Retroactive Annuity Starting Date that precedes the date on which the Participant could have otherwise started receiving benefits under the Plan. The payments and make-up payments described herein for a Participant who is subject to a Retroactive Annuity Starting Date shall be determined in accordance with Code Section 417(e). Notwithstanding anything in this paragraph to the contrary, the Plan Administrator may provide, in its sole discretion, benefits (including adjustments to benefits) based on a Retroactive Annuity Starting Date if the requirements of Code Section 417(e) and the regulations thereunder are satisfied.
- (e) For any distribution notice issued in Plan Years beginning after December 31, 2006, any reference to the 90-day maximum notice period requirements of Code Sections 402(f) (the rollover notice), 411(a)(11) (Participant's consent to distribution), and 417 (notice regarding the joint and survivor annuity rules) is changed to 180 days.

4.05 Small Benefit Payments

- (a) Lump sum payment of small benefits.

If, upon the occurrence of any of the events described below in this Section, the amount of retirement benefit payable is less than \$125 per month (\$75 prior to November 1, 1996), a lump sum payment of the Participant's entire non-forfeitable

benefit will be made in lieu of benefit payments, provided that, for distributions commencing on or after March 28, 2005, if the present value of such benefit determined in accordance with the provisions of this Section 4.05 is in excess of \$1,000 a lump sum payment will be made only with the consent of the Participant or other payee. If the Participant is married, the spouse must also consent to any lump sum payment for which the Participant's consent is required, unless the Plan Administrator is satisfied that such consent cannot practically be obtained because the spouse cannot be located or for such other reasons as may be permitted under regulations or rules published by the Secretary of the Treasury. The consent of the Participant and the Participant's spouse shall be obtained in writing during the ninety (90) day period ending on the Payment Starting Date and in accordance with the notice and other requirements described in Section 4.04 entitled 'General Election Requirements.' Such lump sum payment will be made on account of the occurrence of any of the following events:

- (1) on the Participant's Retirement Date;
- (2) upon the death of an Active, Terminated or Late Retired Participant;
- (3) upon the Participant's termination of Service. With respect to a Participant who is not eligible to retire upon his termination of Service, the amount of such Participant's retirement benefit payable for purposes of this Section shall be determined by reference to such Participant's Accrued Benefit.

The present value of a non-forfeitable benefit or the lump sum payment will be the greater of the Actuarial Equivalence of (i) the Participant's retirement benefit payable in the Normal Form at Normal Retirement Date (excluding all retirement type or other plan subsidies), or (ii) the Participant's retirement benefit payable as an immediate annuity in the Normal Form at Early Retirement Date provided the Participant is eligible for early retirement (or in the case of a deceased Participant, would have been eligible if alive) on the date a distribution is made under this Section, taking into account any subsidy for early retirement (and no other subsidies).

- (b) For purposes of calculation of Actuarial Equivalence as described in Section 4.05(a) and for purposes of the Plan's provisions relating to the calculation of the present value of a benefit payment that is subject to Section 417(e) of the Code, as well as any other Plan provision referring directly or indirectly to the "applicable interest rate" the interest rates and mortality tables are as follows:

- (b-1) For distributions made on and after November 1, 1996 but before December 31, 2002:

Interest: The interest rate on thirty (30)-year Treasury securities as in effect for the second month preceding the month in which the distribution is made, as published by the Commissioner of

Internal Revenue for that month in rulings, notices or other guidance.

Mortality: The mortality table based on the prevailing commissioners' standard table (described in Section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued as of the date on which a determination under this Section is being made, as published by the Commissioner of Internal Revenue, for that date, in rulings, notices or other guidance.

(b-2) For distributions made on or after December 31, 2002 but before January 1, 2008:

Interest: The interest rate on thirty (30)-year Treasury securities as in effect for the second month preceding the month in which the distribution is made, as published by the Commissioner of Internal Revenue for that month in rulings, notices or other guidance.

Mortality: The 1994 Group Annuity Reserving (GAR) Table, projected to 2002, based upon a fixed blend of 50% of the unloaded male mortality rates and 50% of the unloaded female mortality rates, or such successor table as shall be prescribed from time to time by the Secretary of the Treasury under Section 417(e)(3)(A)(ii)(I) of the Code.

Effective for distributions commencing on or after December 31, 2002, notwithstanding any Plan provision to the contrary, the applicable mortality table used for purposes of satisfying the requirements of Section 417(e) of the Code as set forth in this Plan is the table prescribed in Revenue Ruling 2001-62, or such successor table as shall be prescribed from time to time by the Secretary of the Treasury under Section 417(e)(3)(A)(ii)(I) of the Code.

(b-3) Except as provided by the PBGC or IRS, for distributions made on or after January 1, 2008:

Interest: The applicable interest rate described by Code Section 417(e) after its amendment by Pension Protection Act of 2006. Specifically, the applicable interest rate shall be the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) for the second calendar month (lookback month) before the calendar month in which the annuity starting date occurs (stability period). For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code Section 430(h)(2)(C) if:

- (i) Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding paragraph for the average yields for the 24-month period described in such section, and
- (ii) Code Section 430(h)(2)(G)(i)(II) were applied by substituting "Section 417(e)(3)(A)(ii)(II) for "Section 412(b)(5)(B)(ii)(II)," and
- (iii) The applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.

Mortality: The applicable annual mortality table within the meaning of Code Section 417(e)(3)(B), as initially described in Revenue Ruling 2007-67.

- (b-4) For distributions made prior to November 1, 1996, Actuarial Equivalence and present value shall be determined in accordance with the Prior Plan as constituted on the date of such distribution.

4.06 Alternative Benefit Payment Options

Subject to Section 4.07 entitled "Minimum Required Distributions," in the event a married Participant duly elects with the consent of his spouse pursuant to Section 4.04 above not to receive his retirement benefit in the form of a Qualified Joint and Survivor Annuity, or if such Participant is not married, in the Normal Form, such Participant may elect to have his retirement benefit paid to him in any one of the following optional forms:

(a) Social Security Adjustment Option

A Participant, or spouse eligible for benefit payments resulting from Spouse's Coverage, whose first benefit payment is due before his Social Security Date and who has not elected any other benefit payment option may elect the Social Security adjustment option. The Participant, or the spouse, as the case may be, will then receive increased benefit payments before his Social Security Date and decreased or no payments thereafter in order to provide him as nearly as possible with a level income for his lifetime from Social Security and this Plan. This arrangement will not be available if a Participant is eligible to receive disability benefits under the Federal Social Security Act.

For the purposes of this option, the Participant or spouse, as the case may be, shall name a Social Security Date. If the Participant elects to receive Social Security benefits at age sixty-two (62), his Social Security Date will be the first day of the month following his sixty-second birthday if his birthday occurs on the first or second day of the month. If his sixty-second birthday does not occur on the first or second day of the month, the Social Security Date will be the first day of the second month following his sixty-second birthday. The Social Security Date of a spouse electing to receive Social Security benefits at age sixty-two (62) will be the first day of the month coinciding with or next following the spouse's sixty-second birthday. The Social Security Date for a Participant or spouse electing to receive Social Security benefits at age sixty-five (65) will be the first day of the month coinciding with or next following his sixty-fifth birthday.

If a Participant or spouse elects this option, the monthly amount of benefit payable to him before his Social Security Date will equal the amount of retirement benefit which would have been provided for him if he had not elected this option plus the product of paragraphs (a-1) and (a-2) below:

- (a-1) the appropriate percentage determined from Table D-1;
- (a-2) his old-age insurance benefit or, if greater, his monthly spouse's insurance benefit, determined by the Plan Administrator from the provisions of the Social Security Act as constituted on the Participant's Retirement Date;

provided, if the above total is less than paragraph (a-2), the amount payable to him before his Social Security Date will instead equal the amount of retirement benefit which would have been provided for him if he had not elected this option times the appropriate percentage from Table D-2.

The monthly amount of benefit, if any, payable to him on and after his Social Security Date will equal the monthly amount of benefit payable to him before his Social Security Date, determined from the preceding paragraph, minus paragraph (a-2) above.

(b) Joint Retirement Benefit Option

The Participant may elect to have his benefit paid in the form of a joint and last survivor annuity to the Participant and an annuitant named by the Participant, with survivor income at the death of the Participant in an amount equal to either 100%, 75%, 66 2/3%, or 50% of the amount paid during the life of the Participant.

The yearly amount of benefit payments to the Participant will be a percentage, determined from Table E, of the amount of retirement benefit which would have been provided for him under the Normal Form. The yearly amount of benefit payments to the joint payee will equal the amount of benefit payments to the Participant, or such fraction thereof as the Participant specifies in his election of the option.

(c) Single Life Retirement Option (the Normal Form)

A Participant may elect to have his retirement benefit paid in the Normal Form.

(d) Special Options

Subject to the limitations described in this Article, certain other special life annuity contingent benefit payment options may be arranged to meet special needs. The following options may not be elected:

- (d-1) deferral of payments under an interest only arrangement; or
- (d-2) payment to a joint payee in an amount in excess of the monthly amount payable to the Participant under the terms of the option; or
- (d-3) payment for a period extending beyond:
 - (d-3)(i) the life expectancy of the Participant; or
 - (d-3)(ii) the combined life expectancy of the Participant and the Participant's designated Beneficiary.

Life expectancies, for purposes of determining required distributions under Section 401(a)(9), must be computed by the use of the appropriate life expectancy tables issued by the Internal Revenue Service from time to time.

Factors used to calculate the amount of retirement benefit under a special benefit payment option will be on an actuarial basis consistent with the factors used in Table E.

Any special benefit payment option which provides increasing payment amounts must provide for a minimum amount to be distributed each year which is at least equal to the minimum amount required to be distributed under the Federal income tax rules applicable to qualified plans.

All requests for a special benefit payment option will be granted uniformly among Participants in accordance with the terms of any group annuity contract or any other funding vehicle used by the Plan for purposes of making benefit payments under the Plan.

4.07 Minimum Required Distributions

- (a) Notwithstanding any provision of the Plan to the contrary, with respect to distributions under the Plan made on and after January 1, 2001 but before January 1, 2003, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the regulations under Section 401(a)(9) of the Code that were proposed on January 17, 2001 (the '2001 Proposed Regulation').
- (b) Notwithstanding any provision of the Plan to the contrary, with respect to distributions under the Plan made for calendar years beginning on or after January 1, 2003, the Plan will apply the minimum distribution requirements of Code Section 401(a)(9) of the Code in accordance with the final regulations under Code Section 401(a)(9) that were issued on April 17, 2002 and the provisions of Section 4.07(c).
- (c) The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The requirements of this Section will take precedence over any inconsistent provisions of the plan. All distributions required under this Section will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Code. Notwithstanding the other provisions of this Section, other than the preceding sentence, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

(c-1) Time and Manner of Distribution.

- (i) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (ii) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (a) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.
 - (b) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (c) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (d) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section (c-1), other than Section (c-1)(ii)(a), will apply as if the surviving spouse were the Participant.

For purposes of this Section (c-1) and Section (c-4), distributions are considered to begin on the Participant's Required Beginning Date (or, if Section (c-1)(ii)(d) applies, the date distributions are required to begin to the surviving spouse under Section (c-1)(ii)(a)). If annuity payments irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section (c-1)(ii)(a)), the date distributions are considered to begin is the date distributions actually commence.

- (iii) Form of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a

single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Sections (c-2), (c-3) and (c-4) of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the Participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury Regulations that apply to individual accounts.

(c-2) Determination of Amount to be Distributed Each Year.

- (i) General Annuity Requirements. If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
 - (a) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
 - (b) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section (c-3) or (c-4);
 - (c) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
 - (d) payments will either be nonincreasing or increase only as follows:
 - (1) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - (2) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Section (c-3) dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p);

- (3) to provide cash refunds of employee contributions upon the Participant's death; or
 - (4) to pay increased benefits that result from a plan amendment.
 - (ii) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section (c-1)(ii)(a) or (b)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.
 - (iii) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
- (c-3) Requirements For Annuity Distributions That Commence During Participant's Lifetime.
 - (i) Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, annuity payments to be made on or after the Participant's Required Beginning Date to the designated beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of the Treasury Regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.
 - (ii) Period Certain Annuities. Unless the Participant's spouse is the sole designated beneficiary and the form of distribution is a period certain

and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Section (c-3)(ii), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

- (c-4) Requirements For Minimum Distributions Where Participant Dies Before Date Distributions Begin.
- (i) Participant Survived by Designated Beneficiary. If the Participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Section (c-1)(ii)(a) or (b), over the life of the designated beneficiary or over a period certain not exceeding:
 - (a) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
 - (b) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

- (ii) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Section (c-4) will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section (c-1)(ii)(a).

(c-5) Definitions.

- (i) Designated beneficiary. The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.
- (ii) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section (c-1)(ii).
- (iii) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.
- (iv) Required Beginning Date. The date specified in Section 4.02 of the Plan.

4.08 Direct Rollovers

This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator in accordance with applicable regulations, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

- (a) A Distributee who is entitled to elect a Direct Rollover with respect to all or any portion of a distribution but who does not make any election shall be deemed to have rejected the Direct Rollover option.
- (b) A Distributee who elects a Direct Rollover with respect to any Eligible Rollover Distribution that is one in a series of installment payments made at least annually over a period of less than ten (10) years shall be deemed to have made the same election with respect to all subsequent Eligible Rollover Distributions in the series unless and until the Distributee changes the election. A change of election shall be accomplished by notifying the Plan Administrator of the change in the form and manner prescribed by the Plan Administrator.
- (c) Within a reasonable period of time, but not less than thirty (30) days, before an Eligible Rollover Distribution is to be made, the Plan Administrator shall provide to the Distributee an explanation of the right to elect a Direct Rollover and the federal tax withholding consequences of failing to elect a Direct Rollover. A Distributee who elects a Direct Rollover must provide all information that the Plan Administrator may require to complete the Direct Rollover.
- (d) For the purposes of this Section, the following definitions will apply:
 - (d-1) An 'Eligible Rollover Distribution' is any distribution of all or any portion of the balance of the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (at least annually) made for the life (or the life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities) except that for distributions made on or after January 1, 2002, after-tax contributions are included in a distributee's Eligible Rollover Distribution; and, effective for distributions made on or after January 1, 2002, any distribution upon hardship of the distributee.
 - (d-2) A distribution of less than \$200 that would otherwise be an Eligible Rollover Distribution within the meaning of paragraph (d-1) shall not be an Eligible Rollover Distribution if it is reasonable to expect that all such distributions to the Distributee from the Plan during the same calendar year will total less than \$200.
 - (d-3) An 'Eligible Retirement Plan' is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of

the Code, a qualified trust described in Section 401(a) of the Code and for distributions made on or after January 1, 2002, a deferred compensation plan described in Section 457(b) of the Code (but only if such plan agrees to separately account for amounts distributed from this Plan) and an annuity contract described in Section 403(b) of the Code, that accepts the Distributee's Eligible Rollover Distribution. For distributions made after December 31, 2007, a Participant or beneficiary may elect to roll over directly an "eligible rollover distribution" to a Roth IRA described in Section 408A(b) of the Code. For this purpose, the term "eligible rollover distribution" includes a rollover distribution described in Section 4.08.

However, in the case of an Eligible Rollover Distribution to a surviving spouse for Plan Years beginning prior to January 1, 2002, an Eligible Retirement Plan is limited to an individual retirement account or individual retirement annuity.

- (d-4) A "Distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse.
- (d-5) A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.
- (e) For taxable years beginning after December 31, 2006, a Participant may elect to transfer employee after-tax contributions by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred (including interest thereon), including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.
- (f) For distributions after December 31, 2009, a non-spouse beneficiary who is a "designated beneficiary" under Section 401(a)(9)(E) of the Code and the Treasury Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an Individual Retirement Account (IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an "eligible rollover distribution" under Section 401(a)(31) of the Code.
 - (f-1) Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 4.08(f), the distribution, if made prior to January 1, 2010, is not subject to the direct rollover requirements of Section 401(a)(31) of the Code (including Section 401(a)(31)(B) of the Code), the notice requirements of Section 402(f) of the Code or the mandatory withholding requirements of Section 3405(c) of the Code. If a non-spouse beneficiary receives a

distribution from the Plan, the distribution is not eligible for a 60-day (non-direct) rollover.

- (f-2) A non-spouse beneficiary may not roll over an amount that is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the required minimum distributions from the IRA shall be determined in accordance with Section 4.07.

- (g) If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Section 401(a)(9)(E) of the Code.

ARTICLE 5 - TERMINATION OF SERVICE

5.01 Non-forfeitable Benefits

An Active Participant will have a non-forfeitable interest in his Accrued Benefit when he reaches his Normal Retirement Age.

A Participant who terminates Service prior to his Normal Retirement Age will have a non-forfeitable interest in his Benefit Attributable to Participant Contributions. His non-forfeitable interest, if any, in his Benefit Attributable to Employer Contributions will equal his vested percentage in such benefit determined from the Vesting Schedule in this Article.

5.02 Vested Percentage

- (a) Except as otherwise required by Article 11, entitled "Top-Heavy Provisions," a Participant who is credited with one (1) Hour of Service on or after the first day of the Plan Year beginning in 1989 will have his vested percentage in his Benefit Attributable to Employer Contributions on the date he terminates Service determined from the following:

Vesting Schedule

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 5	0%
5 or more	100%

A Terminated Participant who terminated service prior to the first day of the Plan Year beginning in 1989 will have the vested percentage in his Accrued Benefit determined by the Vesting Schedule in effect on the date he terminated service.

- (b) With the exception of Years of Service described below, all Years of Service with the Employer, or with any Affiliated Company, shall be aggregated for vesting purposes.
- (b-1) Any Year of Service which would have been excluded if the Employee had returned to Service prior to the first day of the Plan Year beginning after December 31, 1984, in accordance with the Prior Plan as constituted immediately before such date, shall be excluded for all purposes thereafter, including any future application of this Section.
- (b-2) If a Participant incurs a One-Year Break in Service (or a series of consecutive One-Year Breaks in Service) before such Participant has vested in any percentage of his Benefit Attributable to Employer Contributions, Years of Service prior to a One-Year Break in Service (or series of One-Year Breaks

in Service) shall be excluded from such aggregation if the number of consecutive One-Year Breaks in Service equals or exceeds the greater of:

- (i) five; or
- (ii) the number of prior Years of Service aggregated before such Break in Service.

Once excluded, a Year of Service shall be excluded for all purposes thereafter, including any future application of this rule.

- (b-3) Any Year of Service throughout which the Employee elected not to make required contributions shall be excluded for purposes of vesting.
- (b-4) For purposes of vesting only, Years of Service prior to the Employee's attainment of age eighteen (18), provided such Employee performs one Hour of Service on or after January 1, 1985.

Any other Participant will continue to be subject to the Vesting Schedule in effect on the date he was last credited with one (1) Hour of Service for vesting purposes.

Notwithstanding the above Vesting Schedule, if a Participant terminates Service after his Early Retirement Age, his Vested Percentage will equal 100%.

5.03 Disposition of Benefit Attributable to Participant Contributions

A Participant who terminates Service prior to becoming a Retired Participant (including Participants whose employment is terminated by the Employer regardless of whether a grievance or similar procedure has been filed or is pending) may elect paragraph (a) or, if eligible, paragraph (b) below with respect to his Benefit Attributable to Participant Contributions on the date he becomes a Terminated Participant. If he elects paragraph (a), he may, prior to becoming a Retired Participant, elect paragraph (b):

- (a) A Participant may leave his Benefit Attributable to Participant Contributions in the Plan. He will be entitled to receive a benefit at Normal Retirement Date in an amount equal to the sum of paragraphs (a-1) and (a-2):
 - (a-1) 100% of his Benefit Attributable to Participant Contributions; and
 - (a-2) the product of the vested percentage determined from the Vesting Schedule and his Benefit Attributable to Employer Contributions.

Any remaining portion of his Accrued Benefit shall be forfeited and canceled.

- (b) A Terminated Participant may elect, prior to attainment of Early Retirement Age, to withdraw his Benefit Attributable to Participant Contributions from the Plan, subject

to the provisions of paragraph (c). A Terminated Participant who has attained Early Retirement Age on or after December 1, 1978 may elect to withdraw his Benefit Attributable to Participant Contributions, provided that the monthly retirement benefit payable to such Participant on an Early Retirement Date is less than \$125 (\$75 for distributions prior to November 1, 1996).

(b-1) The Participant will receive a distribution equal to the greater of:

- (i) his Participant Accumulation; or
- (ii) the Actuarial Equivalence of his Benefit Attributable to Participant Contributions. Actuarial Equivalence shall have the same meaning as that term is defined in Section 4.05.

(b-2) As a result of the distribution described in paragraph (b-1), the Benefit Attributable to Participant Contributions for such Participant will be canceled. In addition, if the Participant's Vested Percentage is 0%, his Benefit Attributable to Employer Contributions shall also be canceled.

(b-3) If the Participant's Vested Percentage is 100%, the Participant will be entitled to receive a benefit at Normal Retirement Date in an amount equal to his non-forfeitable interest in Benefit Attributable to Employer Contributions. Any remaining benefit shall be canceled.

(b-4) If the amount of retirement benefit remaining after the steps described above is less than \$125 a month (\$75 for distributions prior to November 1, 1996), a lump sum payment may be made in accordance with Section 4.05, entitled 'Small Benefit Payments.' Provided, however, for distributions commencing on or after March 28, 2005, the determination of whether or not the present value of the Participant's entire non-forfeitable benefit exceeds \$1,000 is made before cancellation of any benefits due to a distribution made under paragraph (b-1), above.

(c) If the Participant is married, an election of paragraph (b) above will not be effective unless paragraph (c-1) or paragraph (c-2) applies:

(c-1) for distributions commencing on or after March 28, 2005, the present value of the Participant's Accrued Benefit, determined in accordance with Section 4.05 is less than \$1,000; or

(c-2) the Participant's spouse has consented in writing to such election and such consent has been witnessed by a Plan representative or notary public. Such consent must acknowledge the effect of the election on the spouse. The requirement for such a written consent may be waived if a Plan representative determines such spouse cannot be located or is otherwise unable to give such consent under circumstances authorized by regulation.

5.04 Restoration of Benefits Upon Return to Service of Former Active Participant

If a former Active Participant, who had terminated on or after the first day of the first Plan Year commencing during 1976, returns to Service after terminating employment (including by reason of reinstatement in connection with a grievance or similar procedure), any Accrued Benefit which previously had been forfeited or canceled will be restored to his credit only under the circumstances stated in paragraphs (a) and (b), subject to paragraphs (c) and (d) below:

- (a) The Participant's Accrued Benefit credited to him prior to the date he terminated Service shall be restored, subject to paragraph (b) below, if the Participant meets any of the following requirements on the date he again becomes an Active Participant:
 - (a-1) he returns to Service prior to five consecutive One-Year Breaks in Service;
or
 - (a-2) he had at any time in the past attained any nonforfeitable interest in his Benefit Attributable to Employer Contributions; or
 - (a-3) his Years of Service for vesting purposes aggregated at the time he terminated Service exceed the number of consecutive One-Year Breaks in Service commencing on the date he terminated employment.

Provided, any Year of Service which would have been excluded if the Participant had returned to Service prior to the first day of the Plan Year commencing after December 31, 1984, in accordance with the Plan as constituted on or before such date, shall be excluded for all purposes thereafter, including any future application of this paragraph.

- (b) Any Accrued Benefit with respect to which the Participant has received any payments due to his election to withdraw his Benefit Attributable to Employee Contributions from the Plan, or any Accrued Benefit with respect to which the Participant has a Vested Percentage of less than 100% and has received any payments, shall not be restored to his account unless the Participant returns to the Plan the amount of such payments plus interest before incurring five consecutive One-Year Breaks in Service or, if earlier, prior to the five (5) years after resuming employment covered by the Plan. Interest shall be determined from the date of receipt of the payment to the date of repayment at the Plan Interest Rate.
- (c) Any Accrued Benefit with respect to which the Participant has received any payments which is not described in paragraph (b) above shall not be restored to his account.
- (d) If the Participant does not repay to the Plan the amount determined under (b) above, or if the Participant has received an amount described under paragraph (c) above, the

total amount of such Participant's Accrued Benefit shall remain reduced by the actuarial equivalent of the benefit credit not restored.

5.05 Forfeitures

If a Terminated Participant receives a distribution of his entire non-forfeitable Accrued Benefit in accordance with Section 5.03, the non-vested portion of such Participant's Accrued Benefit shall be immediately forfeited. For purposes of this Article, if the Participant is 0% vested in his Accrued Benefit, the Participant shall be deemed to have received a distribution of his entire non-forfeitable Accrued Benefit immediately upon termination from Service.

Any portion of a Participant's benefit forfeited shall be used to reduce the Employer's contributions in the current or subsequent years.

5.06 Lost Participants and Beneficiaries

Notwithstanding any other provision of the Plan, in the event the Employer, after reasonable effort, is unable to locate a Participant or Beneficiary to whom a benefit is payable under the Plan, such benefit shall be forfeited; provided, however, that such benefit shall be reinstated (in the same amount and form as that of a benefit forfeited) upon proper claim made by such Participant or Beneficiary prior to termination of the Plan.

ARTICLE 6 - DEATH BENEFITS

6.01 Effect of Death And Single Sum Death Benefit

- (a) Upon the death of a person listed in paragraph (b) below, a death benefit in a single sum will be paid to the Participant's Beneficiary if the Participant's "Guaranteed Return" exceeds the total of all retirement benefit or spouse's benefit payments made or due to the Participant or other person deriving his rights under this Plan from the Participant. The amount of the death benefit will be the excess.

"Guaranteed Return" shall mean:

- (a-1) with respect to a Participant described in paragraph 6.01(b)(i) below, the Actuarial Equivalence (as defined in Section 4.05) of the Benefit Attributable to Participant Contributions.
- (a-2) with respect to any other person described in paragraph (b) below, the Participant Accumulation.
- (b) Such single sum death benefit is payable upon the death of one of the following persons:
- (b-1) an Active, Late Retired or Terminated Participant, except for a Participant who is survived by a spouse eligible for benefit payments under Section 6.02 entitled "Spouse's Coverage I" or Section 6.03 entitled "Spouse's Coverage II."
- (b-2) A Retired Participant who is not survived by a spouse or other Beneficiary who is eligible for retirement benefit payments under the optional form of benefit that the Retired Participant was receiving his payments immediately preceding his death as elected by such Retired Participant under Article 4.
- (b-3) A spouse who is receiving benefit payments under Section 6.02 entitled "Spouse's Coverage I" or Section 6.03 entitled "Spouse's Coverage II."

(c) **Retired Participants**

Except as provided in paragraph 6.01(a) above, the death benefit, if any, payable to the Beneficiary of a deceased Retired Participant shall be determined in accordance with Article 4 based on the benefit payment option that the Retired Participant was receiving his payments immediately preceding his death.

- (d) Except as provided in this Section and Sections 6.02 and 6.03, no death benefit will result from the death of an Active, Terminated or Late Retired Participant who dies before becoming a Retired Participant.

6.02 Spouse's Coverage I

- (a) Upon the death of a married Participant who dies while in the active Service of the Employer, the spouse of such Participant will be eligible for benefit payments for life if the following conditions are met:
 - (a-1) the Participant had reached his forty-fifth (45th) birthday;
 - (a-2) the Participant had completed ten (10) Years of Service;
 - (a-3) the Participant had been married to his present spouse throughout the twelve (12)-month period immediately preceding the Participant's death and such marriage was performed before proper civil or religious authority or is recognized as a common law marriage in the state where he resides; or
 - (a-4) the Participant had terminated employment after becoming eligible to retire early and death occurred before receiving any benefits under the Plan, provided the present spouse is eligible under (a-3) above.
- (b) The yearly amount of benefit payable to the spouse, who is eligible for benefit payments in accordance with paragraph (a) above, will equal either paragraph (b-1) or paragraph (b-2), whichever is applicable:
 - (b-1) If the spouse has not duly elected the Social Security adjustment option as described in paragraph (b-2) or the lump sum option described in paragraph (c) below- paragraph (i) times paragraph (ii) as follows:
 - (i) The annual amount of retirement benefit accrued to the Participant as of the date of his death determined under Article 3;
 - (ii) Fifty percent (50%); provided, however, such percentage shall be reduced by one-half percent (1/2%) for each year, if any, by which the spouse is more than five years younger than the Participant, but not below forty percent (40%). Provided, however, that the benefit payable to the spouse shall never be less than the benefit the spouse would receive under Spouse's Coverage II described in paragraph 6.03(b) as if such spouse were not eligible for death benefits provided under this Section 6.02.
 - (b-2) if the spouse has duly elected the Social Security adjustment option - the amount determined from paragraph (b-1) adjusted in accordance with the subsection entitled "Social Security Adjustment Option" in Article 4.
- (c) If elected within ninety (90) days after the Participant's death, the spouse may elect a lump sum payment in lieu of retirement benefit payments as described in paragraph (b) above. The amount of any lump sum payment will be the Actuarial Equivalence

of the yearly retirement benefit provided to such spouse. Actuarial Equivalence for this purpose shall have the same meaning as that term is defined in Section 4.05 for small benefit payments.

- (d) The yearly amount of retirement benefit payable to a spouse, as provided in this Section 6.02, will in no event be less than the Participant's Benefit Attributable to Employee Contributions.
- (e) Benefit payments will commence to the spouse on the first day of the month next following the death of the Participant and will end with the payment due immediately before the death of the spouse.

Provided, however, for distributions commencing on or after March 28, 2005, if the present value of such benefit determined in accordance with Section 4.05 is in excess of \$1,000 and the payment is to begin before the Participant would have reached his Normal Retirement Date, the spouse must consent to the commencement of such payments, or they will be deferred. If such payments are deferred, they will commence on the first day of any month the spouse chooses, but not later than the date the Participant would have reached his Normal Retirement Date.

6.03 Spouse's Coverage II

- (a) Upon the death of a married Active, Late Retired or a Terminated Participant who had terminated on or after January 1, 1976, the spouse of such Participant will be eligible for benefit payments for life if the following conditions are met:
 - (a-1) the Participant had any vested interest in his Benefit Attributable to Employer Contributions as of his date of death; and
 - (a-2) the Participant had been married to his present spouse throughout the twelve (12)-month period immediately preceding the Participant's death and such marriage was performed before proper civil or religious authority or is recognized as a common law marriage in the state where he resides; and
 - (a-3) the Participant is not eligible for the death benefit described in Section 6.02.
- (b) The yearly amount of benefit payable to the spouse, who is eligible for benefit payments in accordance with paragraph (a) above, will equal paragraph (b-1) or paragraph (b-2), whichever is applicable:
 - (b-1) if the spouse has not duly elected the Social Security adjustment option – fifty percent (50%) of paragraph (i) times paragraph (ii) times paragraph (iii):
 - (i) the yearly amount of benefit credited to the Participant as of the date of his death;

- (ii) the appropriate reduction factor determined from Section 3.05 entitled "Amount of Benefit Payable at Early Retirement," if applicable, as if the Participant had become a Retired Participant on the first day of the month coinciding with or next following the later of the date of his death or the date benefits are to commence, taking into account only Years of Service credited to the Participant on his date of death, assuming the Participant survived and retired on an Early Retirement Date;
 - (iii) the appropriate percentage from Table E as if the Participant had duly elected the joint retirement benefit option with fifty percent (50%) continuation and benefit payments had commenced for the Participant on the first day of the month coinciding with or next following the later of the date of his death or the date benefits are to commence, taking into account only Years of Service credited to the Participant on his date of death, assuming the Participant survived and retired on an Early Retirement Date;
- (b-2) if the spouse has duly elected the Social Security adjustment option described in Section 4.06 entitled "Alternative Benefit Payment Options" the amount determined from paragraph (b-1) adjusted in accordance with the Social Security Adjustment Option alternative form of benefit in Article 4.
- (b-3) The yearly amount of retirement benefit payable to a spouse, as provided in this Section 6.03, will in no event be less than the Participant's Benefit Attributable to Employee Contributions.

Benefit payments to the spouse will begin on that first day of the month next following the death of the Participant or, if later, the earliest date at which the Participant could have elected to become a Retired Participant, taking into account only years of service credited to the Participant on his date of death, assuming the Participant survived and Retired on an Early Retirement Date. Provided, however, for distributions commencing on or after March 28, 2005, if the present value of such benefit as determined in accordance with Section 4.05 is in excess of \$1,000 and the payment is to begin before the Participant would have reached his Normal Retirement Date, the spouse must consent to the commencement of such payments, or they will be deferred. If such payments are deferred, they will commence on the first day of any month the spouse chooses, but not later than the date the Participant would have reached his Normal Retirement Date.

- (c) Benefit payments to a spouse whose eligibility for payments is determined by a Participant's death occurring prior to August 23, 1984, will be paid in accordance with the terms of payment in effect on the date of death of the Participant.

6.04 Death Benefits - Minimum Required Distributions

The distribution of death benefits shall be subject to and payable in accordance with Section 4.07.

6.05 Distribution of Small Amounts

Notwithstanding any provision in this Article 6 to the contrary, any death benefit payable under this Article shall be paid in the form of a single lump sum distribution in accordance with Section 4.05 entitled "Small Benefit Payments" if the requirements and conditions of Section 4.05 are satisfied.

6.06 Beneficiaries

- (a) A Participant may name a Beneficiary to receive any death benefit due on or after his death, by written request filed with the Plan Administrator. The Participant may name two (2) or more co-beneficiaries or successor beneficiaries. If a Participant names two or more persons as beneficiaries, such persons or their survivors will be considered co-beneficiaries unless he provides otherwise.
- (b) A Participant may change any named Beneficiary from time to time by written request filed with the Plan Administrator. The consent of his Beneficiary is not required to any naming or change thereof, except as provided in paragraph (c). Such request is effective when the Participant signs it whether or not he is living at the time the request is received by the person or entity responsible for the actual payment of the benefit, but without prejudice to such person or entity for any payments made by it before receipt of the request.
- (c) The spouse of a Participant shall be presumed to be the Beneficiary of the Participant, unless the Participant has designated another Beneficiary subsequent to his marriage, and his spouse has given any waiver or consent required to allow such designation. Spousal consent is required each time the Participant changes his Beneficiary. Such waiver or consent may be made as part of the spousal consent described in Article 4 or made separately. Any waiver or consent made by the Participant's spouse may not subsequently be revoked by such spouse. The reasonable determination by the Plan Administrator as to whether a Participant's Beneficiary designation is effective or a spouse's waiver or consent is sufficient, shall be binding on all parties claiming entitlement to any payment or benefit under the terms of this Plan.

ARTICLE 7 - AMENDMENT OF PLAN

7.01 Amendment of Plan

- (a) Subject to the provisions of this Section, any provisions of this Plan may be amended by the Employer acting through its Board of Managers.
- (b) An amendment to this Plan may not reduce the Accrued Benefit of any Participant, or with respect to benefits accrued as of the amendment effective date or date of adoption, if later, eliminate or reduce an early retirement benefit or a subsidy that continues after retirement, or eliminate an optional form of benefit payment except to the extent permitted by applicable law or regulation or unless such amendment is necessary to establish or maintain the qualification of the Plan under the Code or to conform the Plan to the requirements of ERISA, or, if not so necessary and the amendment is effective retroactively, such amendment is in accordance with paragraph (c).
- (c) An amendment may reduce the Accrued Benefit of Participants as of the date of adoption of the amendment, provided that:
 - (c-1) the amendment is adopted no later than two and one-half (2 ½) months after the end of the Plan Year in which the amendment becomes effective;
 - (c-2) the Accrued Benefit of Participants as of the beginning of the Plan Year in which the amendment becomes effective are not reduced; and
 - (c-3) the amendment shall not take effect until (i) a notice of such amendment is filed with the Secretary of Treasury and (ii) either the Secretary of Treasury has approved such amendment or, if the Secretary has neither approved nor disapproved such amendment, ninety (90) days have elapsed since the date on which such notice was filed.
- (d) An amendment changing the vesting requirements which would impose stricter requirements than those presently in effect for a Participant may not change the requirements in effect for him as of the later of the effective date of the amendment or the date of adoption of the amendment.
- (e) If an amendment changes the vesting provisions, any Participant who has completed at least three (3) Years of Service before the end of the election period specified below may elect to have the amount of his vested benefit determined on the basis of the Plan provisions in effect immediately prior to the effective date of the amendment.

The election period shall begin on the date the amendment is adopted and shall end sixty (60) days after the latest of the date the amendment is adopted, the effective

date of the amendment, or the date the Participant is issued written notice of the amendment.

- (f) Neither the consent of the Participant nor that of any other payee is required for any amendment to the Plan.
- (g) No amendment to the Plan (including a change in the actuarial basis for determining optional or early retirement benefits) shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. For purposes of this paragraph, a plan amendment that has the effect of (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a Participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. Notwithstanding the preceding sentences, a Participant's Accrued Benefit, early retirement benefit, retirement-type subsidy, or optional form of benefit may be reduced to the extent permitted under Code Section 412(c)(8) (for Plan Years beginning on or before December 31, 2007) or Code Section 412(d)(2) (for Plan Years beginning after December 31, 2007), or to the extent permitted under Regulations Sections 1.411(d)-3 and 1.411(d)-4. For purposes of this paragraph, a retirement-type subsidy is the excess, if any, of the actuarial present value of a retirement-type benefit over the actuarial present value of the Accrued Benefit commencing at Normal Retirement Age or at actual commencement date, if later, with both such actuarial present values determined as of the date the retirement-type benefit commences.

ARTICLE 8 - TERMINATION OF PLAN

8.01 Termination of Plan

The Plan may be terminated in whole or in part by the Employer with respect to its own Employees, provided, in the case of a complete termination, the Employer timely submits notice to the Pension Benefit Guaranty Corporation (PBGC) and, provided the PBGC has not prohibited the complete termination.

In the event of termination or partial termination of the Plan, the rights of each affected Participant shall be non-forfeitable with respect to Plan benefits accrued to the date of such termination or partial termination and subject to any curtailment or reduction necessary for qualification or continued qualification under any tax law, or necessary for this Plan to meet the requirements of ERISA or any other applicable law; provided, however, that each Participant's recourse to satisfaction of such rights shall be limited to the extent that

- (a) such benefits have been funded under the Plan, or
- (b) such benefits are insured by the Pension Benefit Guaranty Corporation, or
- (c) such benefits are otherwise provided by law.

In the event of complete termination of the Plan, the available Plan assets will be disposed of through the purchase of annuities, for the exclusive benefit of Participants and their beneficiaries, in the order of priorities stated at the end of this paragraph. An annuity under which payments will commence immediately will be provided for each person who is receiving benefit payments immediately before the termination of the Plan, and for each Participant who is a Late Retired Participant immediately before the termination of the Plan. Deferred annuities with the first payment due to commence at Normal Retirement Date will be provided for all other Participants.

Class 1. The accrued Benefit Attributable to Participant Contributions.

Class 2. With respect to Participants or beneficiaries who have been receiving (or who were eligible to elect to receive) plan benefits in the form of periodic payments during the entire three-year period ending on the plan termination date, the amount of accrued benefit based on the Plan provisions which were in effect during the five-year period ending on the Plan termination date and under which such benefit would be the least, but, for Participants or beneficiaries who have been receiving benefits during such three-year period, not more than the lowest benefit in pay status during such period.

Class 3. Other benefits that are or would be guaranteed by the Pension Benefit Guaranty Corporation if such guaranteed amounts are determined without regard to provisions of Section 4022(b)(5) and 4022(b)(6) of ERISA.

Class 4. All other accrued annuity benefits as to which an allocation has not been made pursuant to the above priorities.

Class 5. All other benefits under the Plan.

Any Plan assets remaining due to an actuarial error after satisfaction of all liabilities of the Plan to Participants, beneficiaries, and other parties will be allocated on a pro rata basis to the Employer and Participants in accordance with Section 4044(d)(3) of ERISA, provided the PBGC has not issued a directive prohibiting the distribution. The portion of such assets allocated to the Employer shall be distributed in portions to the Employer and appropriate agencies of the United States Government as their interest may be. For the purposes of this Section, the term "liabilities of the Plan" shall be construed consistent with the accrued benefit and vesting provisions of ERISA and the Code, as amended, and the term "actuarial error" shall be construed consistent with Section 401(a)(2) of the Code, and rules and regulations issued thereunder.

The Plan shall not be terminated with respect to any Eligible Class of Employees until the Employer obtains all approvals and consents, if any, which may be required under the government contract applicable to that Facility.

The necessary assets determined on the basis of the present value of benefits accrued as of the termination date will be fully allocated under Class 1 before any assets are allocated under Class 2; and then fully allocated under Class 2 before any allocation is made to Class 3; and, so on, allocated to the Class with the lower number before allocation to the higher number Class.

As to any assets available for allocation to Class 4 however, if such assets are not sufficient to satisfy in full the benefits accrued under Class 4 determined on the basis of the Plan provisions in effect as of the termination date, then the benefits under Class 4 to which allocation will be made will be determined instead on the basis of Plan provisions in effect at the later of (a) the beginning of the five-year period ending on the plan termination date, or (b) the effective date of the most recent plan amendment during such five-year period under which benefits would be fully satisfied by assets available for allocation to Class 4. Any assets remaining for allocation to Class 4 after such determination shall then be applied on a pro rata basis to benefits for which no allocation has been made, determined from the Plan on the date of termination.

The Plan Administrator is authorized to make any necessary adjustment in the above procedures and allocations applicable at termination of the Plan in order to meet any requirements imposed on the Plan pursuant to any of the terms of ERISA.

ARTICLE 9 - GENERAL PROVISIONS

9.01 Administration of Plan

If there shall arise any misunderstanding or ambiguity concerning the meaning of any of the provisions of the Plan, the Named Fiduciary shall have complete discretion and the right to construe such provisions and, subject to Sections 9.07 through 9.10, the Named Fiduciary's decision shall be final. The Named Fiduciary shall also have the power and discretion to decide all questions of eligibility for Plan participation and for benefits under the Plan. The Named Fiduciary may establish such rules and regulations supplementing the Plan as it considers desirable.

The findings of facts by the Named Fiduciary as to matters relating to a Participant's employment record are binding on the Participant for the purposes of the Plan. The Plan shall confer no right upon any Employee to be retained as an Employee by the Employer.

If either the Employer or the Plan incurs expenses with regard to the administration and operation of the Plan, such expenses may be deducted and paid from Plan assets (including by reimbursement to the Employer) to the extent not paid by the Employer.

Unless the context indicates otherwise, the masculine pronoun refers to either a man or woman.

9.02 Notices

All persons shall promptly furnish information and proofs to the Named Fiduciary as to any and all facts which the Named Fiduciary may reasonably require concerning any person affected by the terms of the Plan (including date of birth and satisfactory proof, by personal endorsement on benefit checks or otherwise, of the survival of any payee to the due date of any benefit payment).

Each Terminated Participant will inform the Plan Administrator of his changes of address. All notices to any person from the Plan Administrator or Named Fiduciary will be sent to the last known address of such person and there shall be no further obligation to such person in the event any such communication is not received by the person.

If any fact relating to a Participant or any other payee has been misstated, the correct fact may be used to determine the amount of benefit payable to him or to such other payee. If overpayments or underpayments have been made because of such incorrect statement, the amount of any future payments may be appropriately adjusted.

9.03 Restrictions as to Payees

If any payee is a minor or incompetent person, payment may be made or authorized by the Plan Administrator or Named Fiduciary to be made to the person or persons caring for or supporting such payee, in full discharge of all obligations.

There will be no obligation to make any payment to a payee under the Plan until proof is received that the payee was living on the due date of the payment. Subject to the sentence next succeeding, if such proof is not received within seven (7) years of the due date of the payment, and if proof of death is also not received, the obligation to make any payments under the Plan shall be limited to the benefit which would be payable had the payee died immediately before such due date. Anything herein to the contrary notwithstanding, if, after the expiration of such period, it is established that the payee was living on the due date of such payment, any right to payments established by such proof, less any amounts paid as a death benefit, shall be reinstated.

9.04 Restrictions Imposed by Internal Revenue Service

For Plan Years beginning before January 1, 1992, the Plan may continue to rely on the restriction provisions in the Prior Plan as constituted before the following provisions become effective.

For Plan Years beginning on or after January 1, 1992, the following provisions apply:

- (a) in the event of Plan termination, the benefit of any Participant who is a Highly Compensated Employee is limited to a benefit that is non-discriminatory under Section 401(a)(4) of the Code; and
- (b) for Plan Years beginning on or after January 1, 1992, benefits distributed to any of the twenty-five (25) most highly compensated Participants who are Highly Compensated Employees are restricted such that the annual payments are no greater than an amount equal to the payment that would have been made on behalf of the Participant under a single life annuity that is the actuarial equivalent of the sum of the Participant's Accrued Benefit and the Participant's other benefits under the Plan.
- (c) paragraph (b) above, shall not apply if:
 - (c-1) after payment of the benefit to a Participant described in paragraph (b), the value of Plan assets equals or exceeds 110% of the value of current liabilities, as described in Section 412(l)(7) of the Code; or
 - (c-2) the value of the benefits for a Participant described in paragraph (b) is less than one percent (1%) of the value of current liabilities.
- (d) for the purposes of this Section 9.04:

- (d-1) "benefit" includes loans in excess of the amount set forth in Section 72(p)(2)(A), any periodic income, any withdrawal values payable to a living Participant, and any death benefits not provided for by insurance on the Participant's life; and

9.05 Funding and Allocation of Plan Assets

The Employer intends to make the actuarially determined contributions to the Plan. Each Employer contribution is made expressly contingent on its deductibility for the Employer's fiscal year to which such contribution is made. In any event contributions shall be at least equal to the funding required under ERISA.

All retirement benefits will be provided by the Plan upon the Participant's becoming a Retired Participant. Prior to Plan termination no part of Plan assets may be applied other than for the exclusive benefit of Participants and their beneficiaries and the reasonable expenses of administering the Plan, except to the extent that they constitute a Permitted Reversion to the Employer.

A "Permitted Reversion to the Employer" is an Employer contribution, or part thereof, made to this Plan which may be returned to the Employer because such contribution

- (a) is made by reason of a good faith mistake of fact; or
- (b) is conditioned on initial qualification of the Plan under Section 401 of the Code and an application for determination of qualification of the Plan is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan was adopted, or such later date as the Secretary of Treasury may prescribe, and the Plan does not so qualify; or
- (c) is conditioned on its deductibility under Section 404 of the Code.

The return to the Employer of the amount involved must be made within one year of the mistaken payment, the date of denial of the initial qualification of the Plan or the disallowance of the deduction, as the case may be.

The Employer will, subject to the limitations described in this paragraph, have exclusive authority and absolute discretion to determine whether a contribution or any part of a contribution will revert and be repaid to the Employer. The amount which may be returned to the Employer under paragraph (a) or (c) is the excess of the amount contributed over the amount that would have been contributed had there not been a mistake of fact or a mistake in determining the deduction. Earnings attributable to such excess contributions shall not be repaid, and losses attributable thereto shall reduce the amount which may be returned.

9.06 Merger, Consolidation, or Transfer

In the event of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, the amount of benefit which a participant would receive upon a termination of the Plan immediately after such merger, consolidation, or transfer shall be equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer if the Plan had then terminated.

Effective February 1, 2001, all of the assets and liabilities of the Prior Plan that are segregated exclusively for Participants employed at the Pantex Plant and their beneficiaries shall be invested and administered under the terms and provisions of the B&W Pantex Retirement Plan for Non-Bargaining Employees .

9.07 B&W Pantex Investment Committee

- (a) The Board of Managers shall appoint the members of a B&W Pantex Investment Committee (the "Committee") which shall consist of three (3) or more members. The fact that a person is a Participant, former Participant, or prospective Participant or has an interest in any question shall not disqualify him from acting as a member of the Committee or acting on any question. The members of the Committee shall remain in office at the will of the Board of Managers and the Board of Managers may, from time to time, remove any of said members with or without cause. A member of the Committee may resign upon written notice to the remaining member or members of the Committee and the Board of Managers, respectively. In the case of the death, resignation or removal of any member of the Committee, the remaining member or members shall act until a successor-member shall be appointed by the Board of Managers.
- (b) The B&W Pantex Investment Committee shall have complete power and discretion to construe the provisions of the Plan. The decision of the Committee with respect to any misunderstanding or ambiguity concerning the meaning of any of the provisions of the Plan shall be final. The Committee shall also have the power and discretion to decide all questions of eligibility for Plan participation and for benefits under the Plan. The Committee may establish such rules and regulations supplementing the Plan as it considers desirable.

9.08 Procedures for Presenting Claims

- (a) A written request for a Plan benefit made by either a Participant or Beneficiary (or their duly authorized representative) is a claim; the person making such claim is a claimant.
- (b) Each claim shall be presented to the Named Fiduciary who shall, within a reasonable period of time not to exceed ninety (90) days from its receipt, either accept it or deny it (wholly or partially), and within that time notify the claimant of acceptance or of denial. The ninety (90) days may be extended for another ninety (90)-day period if

the Named Fiduciary finds that special circumstances require an extension of time for processing and the Named Fiduciary provides written notice of such extension to the claimant within the initial ninety (90) day period.

- (c) If a claim is wholly or partially denied, the Named Fiduciary shall furnish to the claimant a written notice setting forth in a manner calculated to be understood by the claimant:
 - (c-1) the specific reason(s) for denial;
 - (c-2) specific reference(s) to pertinent Plan provisions on which any denial is based;
 - (c-3) a description of any additional material or information necessary for the claimant to perfect the claim, and an explanation of why such material or information is necessary; and
 - (c-4) an explanation of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under ERISA Section 502(a) following an adverse benefit determination on review.
- (d) If a claimant does not receive notification of acceptance or denial within ninety (90) days from submission of his claim, he may request review as if his claim had been entirely denied.
- (e) The Named Fiduciary shall implement such administrative processes and safeguards as it deems necessary to ensure and verify that benefit claim determinations are made in accordance with governing Plan documents and, where appropriate, that Plan provisions have been applied consistently with respect to similarly situated claimants.

9.09 Procedures for Review Claims

- (a) Upon a denial of a claim under Section 9.08, the claimant is entitled, either in person or by his duly authorized representative, to:
 - (a-1) request a full and fair review of the claim by the B&W Pantex Investment Committee for this purpose upon written application for review made to the B&W Pantex Investment Committee. In the case of a denial as to which written notice of denial has been given to the claimant, any such request for review of the claim must be made within sixty (60) days after receipt by the claimant of such notice and must specify the reason or reasons the claimant believes the denial should be reversed;
 - (a-2) receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claims for benefits;

- (a-3) submit written comments, documents, records, and other information relating to the claim for benefits; and
 - (a-4) a full and fair review that takes into account all comments, documents, records, and other information submitted by the claimant, without regard to whether such information was submitted or considered in the initial benefit determination.
- (b) The B&W Pantex Investment Committee shall make his decision with respect to a claim review promptly, but not later than sixty (60) days after receipt of the request. Such sixty (60)-day period may be extended for another period of sixty (60) days if the B&W Pantex Investment Committee reviewing the claim finds that special circumstances require an extension of time for processing and notifies the claimant of the extension within the initial sixty (60) day period.
- (c) The final decision of the B&W Pantex Investment Committee shall be in writing and include:
 - (c-1) the specific reason(s) for the adverse determination;
 - (c-2) specific reference(s) to pertinent Plan provisions on which the benefit determination is based;
 - (c-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 to the claimant's claim for benefits; and
 - (c-4) a statement of the claimant's right to bring an action under Section 502(a) of ERISA.
- (d) The interpretations, determinations and decisions of the B&W Pantex Investment Committee shall be final and binding upon all persons with respect to any right, benefit and privilege hereunder. Except as otherwise provided in ERISA, the review procedures of this Section shall be the sole and exclusive remedy and shall be in lieu of all actions at law, in equity, pursuant to arbitration or otherwise. Claimants must exhaust the review procedures of this Article prior to commencement of any action at law, in equity, pursuant to arbitration or otherwise. In addition, for claims incurred on or after January 1, 2002, no such action may be commenced against the Plan, Employer, Board of Managers, or any employee, officer or agent thereof, more than one hundred eighty (180) days after the B&W Pantex Investment Committee's final decision has been rendered with respect to all or any portion of the claim.

9.10 Disability Claims Procedures

The prior provisions of this Article and Sections 1.07, 3.08 & 3.09 notwithstanding, effective for any application for Disability benefits filed by a Participant on or after January 1, 2002, the claims procedures set forth in this Article shall be modified as necessary to comply with the requirements of United States Department of Labor Regulation Section 2560.503-1. These requirements include, but are not limited to, the following.

- (a) Deadline for Initial Determination. The initial decision on a Participant's application for Disability benefits shall be made by the Named Fiduciary within a reasonable period of time, but not later than forty-five (45) days after the Application Date. "Application Date" shall mean the date on which the Participant files a claim for Disability benefits in accordance with the Plan's procedures, without regard to whether all the information necessary for the Named Fiduciary to make a benefit determination accompanies the filing.
 - (a-1) 30-Day Extension. This period may be extended for up to thirty (30) days if the Named Fiduciary: (1) determines that the extension is necessary due to matters beyond the control of the Plan; and (2) notifies the Participant prior to the expiration of the forty-five (45) day period of the circumstances requiring the extension and the date by which the Named Fiduciary expects to render a decision.
 - (a-2) Additional 30-Day Extension. This period may be further extended for up to an additional thirty (30) days if the Named Fiduciary: (1) determines that a decision can not be rendered within the extension period; and (2) notifies the Participant prior to the expiration of the thirty (30) extension day period of the circumstances requiring the extension and the date by which the Named Fiduciary expects to render a decision.
 - (a-3) Notice of Extension. Any notice of extension under the preceding paragraphs shall explain: (1) the standards on which entitlement to Disability benefits is based; (2) the unresolved issues that prevent a decision on the Participant's claim; and (3) the additional information needed to resolve those issues. The Participant shall be provided at least 45 days to provide the requested information.
 - (a-4) Tolling of Period. If an extension under the preceding paragraphs is made due to the Participant's failure to submit information necessary to decide the claim, the period for the Named Fiduciary to make the benefit determination is tolled from the date the notice of the extension is sent to the Participant until the date on which the Participant responds to the request for additional information.

- (b) Notice of Benefit Determination. The Named Fiduciary shall provide the Participant with written or electronic notice of any adverse benefit determination, which notice shall explain:
 - (b-1) the specific reasons for the adverse determination;
 - (b-2) reference to the specific Plan provisions on which the determination is based;
 - (b-3) a description of any additional material or information necessary for the Participant to perfect the claim, and an explanation of why such material or information is necessary;
 - (b-4) a description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the Participant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review;
 - (b-5) if an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either: (1) the specific internal rule, guideline, protocol, or other similar criterion; or (2) a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such will be provided free of charge to the Participant upon request; and
 - (b-6) if the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either: (1) an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the Participant's medical circumstances; or (2) a statement that such explanation will be provided free of charge.
- (c) Appeal of Adverse Benefit Decision. Upon receipt of an adverse benefit determination, the Participant shall:
 - (c-1) have one hundred eighty (180) days following receipt of the notice to request an appeal of the determination;
 - (c-2) have the opportunity to submit written comments, documents, records, and other information relating to the claim for Disability benefits;
 - (c-3) be provided, upon request and free of charge, reasonable access to and copies of, all documents, records, and other information relevant to the Participant's claim for Disability benefits; and

- (c-4) be provided a review that:
- (i) takes into account all comments, documents, records, and other information submitted by the Participant relating to the claim for Disability benefits, without regard to whether such information was submitted or considered in the initial benefit determination;
 - (ii) does not afford deference to the initial adverse benefit determination, and that is conducted by an appropriate named fiduciary of the Plan other than the Named Fiduciary or any individual who is a subordinate of the Named Fiduciary (the “Appeals Fiduciary”); and
 - (iii) in deciding an appeal of any adverse benefit determination that is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate, requires the Appeals Fiduciary to consult with a health care professional who: (A) has appropriate training and experience in the field of medicine involved in the medical judgment, and (B) is neither an individual who was consulted in connection with the initial adverse benefit determination nor a subordinate of any such individual.
- (d) Deadline for Decision on Appeal. The Appeals Fiduciary shall notify the Participant of the benefit determination on review within a reasonable period of time, but not later than forty-five (45) days after receipt of the Participant’s Appeal Request Date. “Appeal Request Date” shall mean the date on which the Participant files a request for appeal of an adverse Disability benefits determination in accordance with the Plan’s procedures, without regard to whether all the information necessary for the Appeals Fiduciary to make a benefit determination on review accompanies the filing.
- (d-1) 45-Day Extension. This period may be extended for up to forty-five (45) days if the Appeals Fiduciary: (1) determines that special circumstances require an extension of time or processing the claim; and (2) notifies the Participant in writing prior to the expiration of the forty-five (45) day period of the circumstances requiring the extension and the date by which the Appeals Fiduciary expects to render a decision. In no event shall the extension exceed forty-five (45) days from the end of the initial period.

- (d-2) Tolling of Period. If an extension under the preceding paragraph is made due to the Participant's failure to submit information necessary to decide the claim, the period for the Appeals Fiduciary to make the benefit determination on review is tolled from the date the notice of the extension is sent to the Participant until the date on which the Participant responds to the request for additional information.

- (e) Notice of Decision on Appeal. The Appeals Fiduciary shall provide the Participant with written or electronic notice of the benefit determination on review as soon as possible, but in no event more than five (5) days after the benefit determination is made. The notice shall provide:
 - (e-1) the specific reasons for the adverse determination;
 - (e-2) reference to the specific Plan provisions on which the determination is based;
 - (e-3) a statement that the Participant is entitled, upon request and free of charge, reasonable access to and copies of, all documents, records, and other information relevant to the Participant's claim for Disability benefits;
 - (e-4) a statement describing: (1) any voluntary appeal procedures offered by the Plan, (2) the Participant's right to request information sufficient to enable the Participant to make an informed decision about whether to submit the dispute to the voluntary level of appeal, and (3) the Participant's right to bring an action under Section 502(a) of ERISA;
 - (e-5) if an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either: (1) the specific internal rule, guideline, protocol, or other similar criterion, or (2) or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such will be provided free of charge to the Participant upon request;
 - (e-6) if the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either: (1) an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the Participant's medical circumstances, or (2) a statement that such explanation will be provided free of charge; and
 - (e-7) the statement, "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to

find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency.”

ARTICLE 10 - TOP-HEAVY DEFINITIONS

10.01 Determination Date

The "Determination Date" for any Plan Year subsequent to the first Plan Year is the last day of the preceding Plan Year. For the first Plan Year of the Plan, the Determination Date is the last day of that year.

10.02 Determination Period

The "Determination Period" is, for Plan Years commencing before January 1, 2002, the Plan Year containing the Determination Date and the four preceding Plan Years. The "Determination Period" is, for Plan Years commencing on or after January 1, 2002, the Plan Year containing the Determination Date.

10.03 Key Employee And Non-Key Employee

A "Key Employee" is any Employee or former Employee (and the Beneficiary of such Employee) who at any time during the Determination Period:

- (a) was an officer of the Employer with compensation exceeding fifty percent (50%) of the dollar limitation under Section 415(b)(1)(A) of the Code; or
- (b) owned, or constructively owned under Section 318 of the Code, an interest in the Employer which:
 - (b-1) causes such Employee to meet the definition of a "five percent owner" as contained in Section 416(i)(1)(B)(i) of the Code; or
 - (b-2) causes such Employee to meet the definition of a "one percent owner" as contained in Section 416(i)(1)(B)(i) of the Code; provided this clause shall apply only when such Employee's annual compensation exceeds \$150,000; or
 - (b-3) is one of the ten (10) largest interests in the Employer owned by an Employee and is at least a one-half (1/2) of one percent (1%) interest; provided this clause shall apply only when such Employee's annual compensation exceeds the dollar limitation under Section 415(c)(1)(A) of the Code.

However, on and after the beginning of the 1985 Plan Year, a former Employee who has not performed an Hour of Service with any Employer maintaining the Plan at any time during the Determination Period will not be considered a Key Employee. If there is more than one Employee owning the same interest in the Employer, the Employee having the greater compensation from the Employer shall be treated as having a larger interest. The determination of who is a Key Employee will be made in accordance with Section 416(i)(1) (taking into account, effective for Plan Years beginning on or after January 1, 2002, the revisions made by the Economic Growth

and Tax Relief Reconciliation Act of 2001) of the Code and the regulations thereunder, which is hereby incorporated by reference.

A “Non-Key Employee” is any Employee who does not meet the definition of a Key Employee.

10.04 Permissive Aggregation Group

“Permissive Aggregation Group” is a group of Plans which includes the Required Aggregation Group plus any other plan or plans of the Employer which, when considered as a group with the Required Aggregation Group, would continue to satisfy the requirements of Sections 401(a)(4) and 410 of the Code.

10.05 Present Value

“Present Value” is the current discounted worth of a Participant's Accrued Benefits using stated interest and mortality assumptions. For purposes of establishing Present Value to compute the Top-Heavy Ratio, any benefit shall be discounted normally for the following mortality and interest assumptions:

Mortality - 1983 Group Annuity Mortality Table for Males, with a six (6) year setback for females.

Interest – Seven and one half percent (7 ½%)

10.06 Required Aggregation Group

“Required Aggregation Group” is a group of plans consisting of (i) each qualified plan, including collectively bargained qualified plans, of the Employer in which at least one Key Employee participates, and (ii) any other qualified plan of the Employer which enables a plan described in (i) to meet the requirements of Sections 401(a)(4) or 410 of the Code.

10.07 Top-Heavy Plan Or Top-Heavy Group

A “Top-Heavy Plan” or “Top-Heavy Group” is, for any Plan Year beginning after December 31, 1983, a Plan that meets any of the following conditions:

- (a) The Top-Heavy Ratio for the Plan exceeds sixty percent (60%), and the Plan is not part of any Required or Permissive Aggregation Group; or
- (b) The Plan is a part of a Required Aggregation Group but not a part of a Permissive Aggregation Group, and the Top-Heavy Ratio for the Group exceeds sixty percent (60%); or

- (c) The Plan is a part of a Required Aggregation Group and part of a Permissive Aggregation Group, and the Top-Heavy Ratio for the Permissive Aggregation Group exceeds sixty percent (60%).

10.08 Top-Heavy Ratio

If the Employer maintains one or more defined benefit plans and the Employer has never maintained any defined contribution plan (including any Simplified Employee Pension Plan) which has covered or could cover a Participant of this Plan, the "Top-Heavy Ratio" is a fraction, the numerator of which is the sum of the Present Values of Accrued Benefits of all Key Employees as of the Determination Date (including any part of any Accrued Benefit distributed during the Determination Period but adjusted as described below), and the denominator of which is the sum of all Accrued Benefits (including any part of any Accrued Benefit distributed during the Determination Period but adjusted as described below) of all Participants as of the Determination Date.

If the Employer maintains one or more defined contribution plans (including any Simplified Employee Pension Plan) and the Employer maintains or has maintained one or more defined benefit plans which have covered or could cover a Participant of this Plan, the Top-Heavy Ratio is a fraction, the numerator of which is the sum of account balances under the defined contribution plans for all Key Employees and the Present Value of Accrued Benefits under the defined benefit plans for all Key Employees, and the denominator of which is the sum of the account balances under the defined contribution plans for all Participants and the Present Value of Accrued Benefits under the defined benefit plans for all Participants. Both the numerator and denominator of the Top-Heavy Ratio are adjusted for any distribution of an account balance or an Accrued Benefit made during the Determination Period (but adjusted as described below) and any contribution due but unpaid as of the Determination Date. Notwithstanding the foregoing sentence, for Plan Years beginning on or after January 1, 2002, the numerator and denominator of the Top-Heavy Ratio are adjusted for any in-service distributions of an account balance or an Accrued Benefit made during the five-year period ending on the Determination Date.

For purposes of this Section, the value of account balances and the Present Value of Accrued Benefits will be determined as of the most recent Valuation Date that falls within or ends with the twelve (12)-month period ending on the Determination Date. The account balances and Accrued Benefits of a Participant who is (i) not a Key Employee during the current year but was a Key Employee in a prior year, or (ii) who has not performed an Hour of Service with any Employer maintaining the Plan at any time during the Determination Period, will be disregarded. The calculation of the Top-Heavy Ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Section 416 of the Code (taking into account, effective for Plan Years beginning on or after January 1, 2002, the revisions made by the Economic Growth and Tax Relief Reconciliation Act of 2001) and the regulations thereunder. Deductible Employee contributions will not be taken into account for purposes of computing the Top-Heavy Ratio. When aggregating plans, the value of account balances and Accrued Benefits will be calculated with reference to the Determination Dates that fall within the same calendar year.

Effective as of the first day of the Plan Year beginning in 1987, if the accrual methods used by all defined benefit plans of the Employer are the same, such method will be used to determine Accrued Benefits for the purposes of this Section. If the accrual methods used by all defined benefit plans of the Employer are not the same, then the fractional rule will be used.

10.09 Terminated Plans

Benefits of a Terminated Plan must be combined with other plans of the Employer if such plan was maintained within the last five (5) years ending on the Determination Date for the plan year for which a Top-Heavy Ratio is being computed, if such plan, except for the fact that it had been terminated, would be part of the Required Aggregation Group for such plan year. For purposes of this Section, a "Terminated Plan" shall mean any plan that has been formally terminated, has ceased crediting service for benefit accruals and vesting purposes, and has been or is distributing all plan assets to participants or their beneficiaries as soon as administratively feasible.

10.10 Valuation Date

"Valuation Date" is the annual date on which liabilities and assets of this Plan are valued and used for computing Plan costs for minimum funding.

10.11 Compensation

"Compensation" as used in this Article 10 is defined as the Compensation used in the Section entitled "Maximum Benefit" in Article 3:

- (a) increased by amounts deferred under any other plan the Employer sponsors described under Sections 125, 132(f)(4), 401(k), 402(h), 403(b), 408 or 457 of the Code; and
- (b) decreased by any remuneration received from a corporation which would be defined as a member of a controlled group of corporations which includes the Employer or any business organization which would be defined as a trade or business (whether or not incorporated) which is under "common control" with the Employer within the meaning of Sections 414(b) and (c) of the Code, after substituting the phrase "more than fifty percent (50%)" for the phrase "at least eighty percent (80%)" each place that the latter phrase appears in Section 1563(a)(1) of the Code, and any member of an "affiliated service group," as defined in Section 414(m) of the Code, which includes the Employer but, in each case, only during the periods any such corporation, business organization or member would be so defined.

ARTICLE 11 - TOP-HEAVY PROVISIONS

11.01 Effect on Plan

The provisions of Section 416 of the Code are hereby incorporated by reference herein, and are generally described in Articles 10 and 11. If this Plan is or becomes Top-Heavy in any Plan Year, the provisions of this Article 11 will supersede any conflicting provision in the Plan. Effective for any Plan Year beginning after December 31, 2001, the provisions of the Plan setting forth the top-heavy provisions of Section 416 of the Code are modified by substituting the term "separation from service" with "severance from employment."

11.02 Minimum Accrued Benefit

Except as provided in paragraphs (d) and (e) below, if the Plan is a Top-Heavy Plan during any Plan Year each Non-Key Employee who is a Participant in this Plan (taking into account the requirements of paragraph 11.02(d) below) shall have an Accrued Benefit under the Plan equal to the greater of the benefit otherwise provided under the Plan and the Minimum Accrued Benefit provided under this Section.

- (a) The Minimum Accrued Benefit shall equal such Participant's average Compensation times the lesser of:
 - (a-1) two percent (2%) times the Participant's Years of Service during the period the Plan is Top-Heavy; and
 - (a-2) twenty percent (20%).
- (b) For purposes of this Section, a Participant shall be credited with a Year of Service with an Employer for each Plan Year in which the Participant has completed 1,000 Hours of Service, except those Plan Years:
 - (b-1) which began prior to January 1, 1984; or
 - (b-2) in which the Plan was not Top-Heavy.
- (c) For purposes of this Section, a Participant's average Compensation shall be determined based on the average of the five (5) consecutive Plan Years (or, if less, the longest number of consecutive years of employment) during which the Participant had the greatest aggregate Compensation; provided, compensation paid during a Plan Year shall not be included if such Plan Year:
 - (c-1) ended prior to January 1, 1984; or
 - (c-2) began after the end of the last Plan Year in which the Plan was Top-Heavy.

- (d) The Minimum Accrued Benefit is determined without regard to any Social Security contribution and applies even though, under other Plan provisions, the Employee would not otherwise be entitled to be a Participant of the Plan or receive an accrual, or would have received a lesser accrual for the year because: (i) the Employee fails to make mandatory contributions to the Plan; (ii) the Employee's compensation is less than a stated amount; (iii) the Employee is not employed on the last day of the accrual computation period; or (iv) the Plan is integrated with Social Security.

If a Non-Key Employee is a Participant covered by this Plan and is also covered under the Employer's defined contribution plan, the two percent (2%) Minimum Accrued Benefit amount shall be increased to three percent (3%) for such Non-Key Employee, except in the following circumstances:

- (d-1) the Top-Heavy Ratio exceeds ninety percent (90%); or
 - (d-2) the Top-Heavy Ratio does not exceed ninety percent (90%), but the Employer elects to make an Adjustment to the Maximum Benefit in lieu of increasing the Minimum Benefit amount.
- (e) If this Plan covers Participants who are also covered by any defined contribution plan maintained by the Employer, the two percent (2%) Minimum Accrued Benefit amount in paragraph (a-1) above shall be increased to three percent (3%) and the amount in paragraph (a-2) above to thirty percent (30%), except in the following circumstances:
 - (e-1) The Top-Heavy Ratio exceeds ninety percent (90%); or
 - (e-2) the Top-Heavy Ratio does not exceed ninety percent (90%), but the Employer elects to make an Adjustment to the Maximum Benefit in lieu of increasing the Minimum Benefit amount.
 - (f) Any Minimum Accrued Benefit which is applicable shall be provided under this Plan.
 - (g) Notwithstanding anything in this Article to the contrary, effective for any Plan Year beginning on or after January 1, 2002, in which this Plan is a Top-Heavy Plan or Top-Heavy Group, this Section shall not apply if the Plan benefits (within the meaning of Section 410(b) of the Code) no Key Employee or former Key Employee.

11.03 Non-forfeatability of Minimum Accrued Benefit

The Minimum Accrued Benefit required (to the extent required to be non-forfeitable under the Section entitled "Minimum Vesting Schedule") may not be forfeited under Sections 411(a)(3)(B) or 411(a)(3)(D) of the Code in the event the Plan ceases to be Top-Heavy.

11.04 Minimum Vesting Schedule

For any Plan Year in which this Plan is Top-Heavy, a Minimum Vesting Schedule will automatically apply to the Plan. The Minimum Vesting Schedule applies to all benefits within the meaning of Section 411(a)(7) of the Code except those attributable to Employee Contributions, including benefits accrued before the effective date of the Top-Heavy Provisions of the Plan and benefits accrued before the Plan became Top-Heavy. Further, no reduction in vested benefits may occur in the event the Plan's status as Top-Heavy changes for any Plan Year. However, this Section does not apply to the Accrued Benefits of any Participant who does not have an Hour of Service after the Plan has initially become Top-Heavy, and such Participant's Accrued Benefits attributable to Employer contributions will be determined without regard to this Section.

For any Plan Year in which this Plan is Top-Heavy the non-forfeitable interest of each Participant in his Accrued Benefit attributable to Employer contributions for the current and any prior year shall be determined from the following schedule, unless the vesting schedule in Article 5 is more favorable:

Minimum Vesting Schedule

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 2	0%
2 but less than 3	20%
3 but less than 4	40%
4 but less than 5	60%
5 or more	100%

11.05 Application of Vesting Schedule

Once the Minimum Vesting Schedule becomes effective, each Participant who is a Participant under the Plan while it is Top-Heavy will continue to vest under the Minimum Vesting Schedule in the event the Plan ceases to be Top-Heavy. Participants who enter the Plan after it ceases to be Top-Heavy will vest under the schedule specified in Article 5.

11.06 Compensation Limitation

For Plan Years beginning on or after January 1, 2002, Earnings in excess of \$160,000 shall be disregarded. Such amount shall be adjusted at the same time and in the same manner as the Commissioner of Internal Revenue Service makes adjustments pursuant to Section 401(a)(17)(B) of the Code. For Plan Years beginning on and after January 1, 1994 but before January 1, 2002, Earnings in excess of \$150,000 shall be disregarded. For Plan Years beginning prior to January 1, 1994, Compensation taken into consideration under this Plan will be limited to \$200,000 per year (in accordance with Sections 414(q)(6) and 401(a)(17) of the Internal Revenue Code), as adjusted from time to time by the Secretary of Treasury.

Provided, for Plan Years beginning before January 1, 1989, the \$200,000 limitation shall not be adjusted.

11.07 Adjustment to the Maximum Benefit

For any Plan Year beginning before January 1, 2000, in which the Plan is Top-Heavy and the Top-Heavy Ratio exceeds ninety percent (90%), the Defined Benefit Fraction and the Defined Contribution Fraction (as those terms are defined in Article 3 shall be determined by substituting 100% for 125% wherever the percentage 125% appears in Code Sections 415(e)(2) and (e)(3). Such substitutions will also be made if the Employer elects to adjust the Maximum Benefit in lieu of providing an increased Minimum Accrued Benefit pursuant to the Section entitled 'Minimum Accrued Benefit'.

11.08 Compensation

"Compensation" as used in this Article 11 is defined as the Compensation used in the Section entitled "Maximum Benefit" in Article 3.

11.09 Collective Bargaining Employees

Notwithstanding any provision of this Plan to the contrary, the Minimum Accrued Benefit requirements of Section 11.02 and the Minimum Vesting requirements of Section 11.04 shall not apply to any Participant who is included in a unit of employees covered by a collective bargaining agreement, provided retirement benefits were the subject of good-faith bargaining between the Employer and employee representative.

ARTICLE 12 - PROHIBITION AGAINST ALIENATION

12.01 Definitions

Unless the context otherwise indicates, the following terms used herein shall have the following meanings whenever used in this Article:

- (a) The words “alternate payee” shall mean any spouse, former spouse, child or other dependent of a Participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the amounts credited to the accounts of a Participant.
- (b) The words “domestic relations order” shall mean, with respect to any participant, any judgment, decree or order (including approval of a property settlement agreement) which both:
 - (i) relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of the participant; and
 - (ii) is made pursuant to a State domestic relations law (including a community property law).
- (c) The words “qualified domestic relations order” shall mean a domestic relations order which satisfies the requirements of Section 414(p)(1)(A) of the Code.

12.02 General Prohibition Against Alienation

Except as otherwise hereinafter provided in this Article, no benefits under this Plan shall be subject in any manner to be anticipated, alienated, sold, transferred, assigned, pledged, encumbered or charged, and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void; nor shall any such benefits in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefits as herein provided for him.

12.03 Exceptions to Prohibition Against Alienation

Notwithstanding Section 12.2 to the contrary, the following shall not be treated as an assignment or alienation prohibited by Section 12.2:

- (a) the creation, assignment or recognition of a right to any benefit payable with respect to a Participant or former Participant under this Plan to an alternate payee pursuant to a qualified domestic relations order; or

- (b) the offset of a Participant's or former Participant's benefit under this Plan against an amount that such Participant or former Participant is ordered or required to pay to this Plan where:
 - (i) the order or requirement to pay arises under a judgment for a crime involving this Plan, a civil judgment, consent order or decree for violation or alleged violation of fiduciary duties as stated in part 4 of subtitle B of title I of ERISA, or pursuant to a settlement agreement between the Secretary of Labor or the Pension Benefit Guaranty Corporation and the Participant or former Participant for violation or alleged violation of fiduciary duties as stated in part 4 of subtitle B of title I of ERISA by a fiduciary or any other person; and
 - (ii) the judgment, order, decree or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to this Plan against the Participant's or former Participant's benefits provided by this Plan; and
 - (iii) to the extent, if any, that survivor annuity requirements apply to distributions to the Participant or former Participant under Code Section 401(a)(11), the rights of such Participant's or former Participant's spouse are preserved in accordance with Code Section 401(a)(13)(C)(iii); or
- (c) any other arrangement, transfer or transaction which is not treated as a prohibited assignment or alienation under Code Section 401(a)(13) or other applicable law.

12.04 Receipt of Domestic Relations Order

If the Plan is served with a domestic relations order, the Plan Administrator shall promptly notify the Participant and any alternate payee to whom such domestic relations order relates of the receipt of such domestic relations order and the Plan's procedures for determining whether such domestic relations order is a qualified domestic relations order. Within a reasonable time after receipt of such domestic relations order, the Plan Administrator shall determine whether such domestic relations order is a qualified domestic relations order and notify the Participant and any concerned alternate payee of its determination.

Effective on or after April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order (QDRO) will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death. Any such domestic relations order is subject to the same requirements and protections that apply to QDROs.

12.05 Establishment of Escrow Account as a Result of Domestic Relations Order

During any period in which the issue of whether a domestic relations order is a qualified domestic relation order is being determined (whether by the Plan Administrator, the B&W Pantex Investment Committee, a court of competent jurisdiction, or otherwise), the Plan Administrator shall cause the funding agent to debit the funding vehicle and credit to an escrow account the amounts which would have been payable to an alternate payee during such period if the order had been, during such period, determined to be a qualified domestic relations order. If, within eighteen (18) months after the Plan is served with such domestic relations order, the domestic relations order (or modification thereof) is determined to be a qualified domestic relations order, the Plan Administrator shall hold and dispose of the amounts credited to the escrow account established with respect to such domestic relations order in accordance with the terms of the qualified domestic relations order and shall reduce the Plan Benefit of the participant with respect to whom the domestic relations order was issued for such amounts and for any additional amounts required to be paid to an alternate payee. Any such reduction shall not cause this Plan to fail to meet the requirements of Section 401(a)(13) of the Code. If within eighteen (18) months after the Plan is served with such domestic relations order, it is determined that the domestic relations order is not a qualified domestic relations order or the issue with respect to whether the domestic relations order is a qualified domestic relations order is not resolved, the Plan Administrator shall terminate the escrow account and restore the amounts then credited to the escrow account to the funding vehicle as though the Plan had never been served with such domestic relations order. Any determination that a domestic relations order is a qualified domestic relations order which is made after the close of the eighteen (18) month period after the Plan was served with such domestic relations order shall be applied prospectively only.

12.06 Review Procedures

Any Participant or alternate payee who is affected by a domestic relations order served upon the Plan may, upon written notice to the B&W Pantex Investment Committee appointed pursuant to Section 9.07, request a review by such Committee of the Plan Administrator's determination with respect to the qualification or lack of qualification of such domestic relations order. Any such review by the Committee shall be subject to the rules and procedures set forth in Article 9.

12.07 Status of Alternate Payee

Any alternate payee who is entitled to receive amounts from this Plan pursuant to a qualified domestic relations order shall, with respect to this Plan and to the extent of the alternate payee's interest in this Plan, have such rights as are specified in the qualified domestic relations order.

ARTICLE 13 - INDEMNIFICATION OF CERTAIN FIDUCIARIES

13.01 Rights to Indemnification

The Employer shall indemnify each director, officer or employee of the Employer who is, or is threatened to be made, a party to any threatened or pending action or proceeding, whether civil, criminal, administrative or investigative, including actions by or in the right of the Employer, by reason of the fact that such director, officer or employee is or was serving at the request of the Employer as a "fiduciary" (as defined by Section 3(21)(A) of ERISA), with regard to the Plan, against expenses (including attorneys' fees), claims, fines, judgments, taxes, causes of action or liability and amounts paid in settlement, actually and reasonably incurred by him in connection with such action or proceeding, unless such expense, claim, fine, judgment, taxes, cause of action, liability or amount arose from his gross negligence, fraud or willful breach of his fiduciary responsibilities under ERISA, except, that with respect to an action by or in the right of the Employer, indemnification shall be made only against expenses (including attorneys' fees).

13.02 Advancement of Expenses

The Employer shall advance all expenses (including attorneys' fees) incurred by any director, officer or employee in defending a civil, criminal, administrative or investigative action, suit or proceeding pending the final disposition of such action, suit or proceeding unless (a) the Board of Managers, by a majority vote of a quorum consisting of directors who were not or are not parties to the action, suit or proceeding concerned or (b) the stockholders determine that, under the circumstances of the individual case, the person by his conduct is not entitled to indemnification because of his gross negligence, fraud or willful breach of his fiduciary responsibilities, upon receipt of an undertaking, with such security as the Board of Managers may reasonably require, by or on behalf of the director, officer or employee to repay such amounts unless it shall ultimately be determined that he is entitled to be indemnified by the Employer as authorized by this Article.

13.03 Determination of Right to Indemnity

To the extent that any director, officer or employee has been successful on the merits or otherwise in the defense of the action, suit or proceeding or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith and if he was advanced expenses as provided herein, his undertaking shall be canceled by the Employer. If any action, suit or proceeding shall terminate by judgment or order adverse to the director, officer or employee, or settlement, conviction or upon a plea of *nolo contendere* or its equivalent, the Board of Managers in the same manner provided herein with reference to advancement of expenses, shall (unless ordered by a court to make indemnification) make a determination whether indemnification of the director, officer or employee is not proper in the circumstances because he has been guilty of gross negligence, fraud or willful breach of his fiduciary responsibilities and, if it is determined that the person is so entitled to indemnification, then

he shall be indemnified against expenses (including attorneys' fees) claims, fines, judgments, taxes, causes of action or liability and amounts paid in settlement actually and reasonably incurred by him in connection with such action or proceeding and, if he was advanced expenses as provided herein, his undertaking shall be canceled. The termination of any action or proceeding by adverse judgment or order, conviction, settlement or plea of *nolo contendere* or the equivalent, shall not of itself, create a presumption that the director, officer or employee was guilty of gross negligence, fraud or willful breach of his fiduciary responsibilities.

13.04 Other Rights

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which any director, officer or employee may be entitled, and shall continue as to a person who has ceased to be a director, officer or employee and shall inure to the benefit of the personal representative, heirs and legatees of such a person.

13.05 Indemnification By More Than One Employer

If a director, officer or employee of the Employer is entitled to indemnification by more than one Employer or Participating Facility with respect to any one action, suit or proceeding, such person shall be entitled to be indemnified only once and the Companies or Facilities shall, in their sole discretion, decide how to allocate such indemnification among them.

ARTICLE 14 - MISCELLANEOUS

14.01 Construction

This Plan shall be construed and enforced according to the laws of the State of Kentucky, and all provisions hereunder shall be administered according to the laws thereof except to the extent preempted by ERISA.

It is intended that the Plan meet the requirements of ERISA and the Code and the Plan shall be interpreted and construed, wherever possible, to comply with the terms of ERISA, the Code, and regulations and rulings issued thereunder.

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

14.02 Discretionary Acts

Any discretionary acts taken under the Plan by the Employer shall be uniform in their nature, and shall be applicable to all Participants and Employees similarly situated, and no discretionary act shall be taken which is discriminatory under the Code.

14.03 Titles and Headings

Titles of Articles and headings to Sections are inserted for convenience of reference only and, in the event of any conflict, the text of the Plan, rather than such titles and headings, shall control.

14.04 Approval of Plan

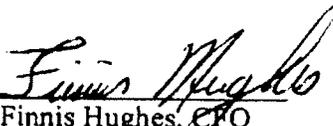
This amendment and restatement of the Plan is designed to comply with the provisions of Section 401 and Section 501 (a) of the Code and the Employer reserves the right to terminate the Plan upon its failure to continue to initially achieve qualification under said Sections. Such failure shall be deemed to have occurred upon receipt of a written final determination from the Internal Revenue Service so stating unless the Employer elects to appeal such determination, in which event such failure shall be deemed to have occurred upon the entry of a final judgment which is not appealed.

14.05 Counterparts

This agreement may be signed in one or more counterparts, each of which shall be an original and all of which shall be deemed one and the same instrument. The execution of any number of counterparts shall have the same effect as if all parties hereto had signed the same document.

IN WITNESS WHEREOF, the Employer has caused this B&W Pantex Retirement Plan for Non-Bargaining Employees to be executed by its duly authorized representative effective as of the dates set forth herein.

BABCOCK & WILCOX
TECHNICAL SERVICES
PANTEX, LLC, KNOWN AS
B&W PANTEX

By: 
Finnis Hughes, CFO

TABLES D-1 AND D-2
FIRST EDITION

SOCIAL SECURITY ADJUSTMENT OPTION

To use these tables, enter column 1 with the number of years, taken to completed twelfths, by which the date the Participant becomes a Retired Participant precedes his Social Security Date. Determine the corresponding percentage from column 2.

Number of Years	TABLE D-1 Percentage	TABLE D-2 Percentage
0	100.0%	--
1	93.3	1499%
2	86.6	750
3	80.0	500
4	73.3	375
5	66.6	300
6	63.3	273
7	60.0	250
8	56.6	231
9	53.3	214
10	50.0	200

TABLE E

JOINT BENEFIT OPTION

To use this table, enter column 1 and column 2 with the age of the Participant and joint payee on the birthday of each nearest to the date the Participant becomes a Retired Participant or, if earlier, the date payments are to commence. Determine the corresponding percentage from the appropriate column. Use column 3 if the benefit payment to the joint payee equals 100% of the reduced benefit payment to the Participant. Use column 4 if the benefit payment to the joint payee equals 75% of the reduced benefit payment to the Participant. Use column 5 if the benefit payment to the joint payee equals 66 2/3% of the reduced benefit payment to the Participant. Use column 6 if the benefit payment to the joint payee equals 50% of the reduced benefit payment to the Participant.

1.	2.	3.	4.	5.	6.
Age of Participant	Age of Joint Payee				
65	60	80.9%	85.0%	86.4%	89.4%
65	65	86.1%	89.2%	90.3%	92.5%
65	70	90.7%	92.9%	93.6%	95.1%
60	60	87.3%	90.1%	91.2%	93.2%
60	65	91.2%	93.3%	94.0%	95.4%
60	70	94.3%	95.6%	96.1%	97.0%

Any percentage which cannot be determined directly from the above table will be determined on an actuarial basis consistent with the above.

The actuarial assumptions used in this table are -

Mortality: 1951 Group Annuity Mortality Table with a 6-year set back for Participant and a one-year set back for the joint payee.

Interest: 2 1/2 %