

STANDARDIZED PROFIT SHARING PLAN WITH 401(K) ARRANGEMENT, INCLUDING SAFE HARBOR OPTION ADOPTION AGREEMENT 01-001



ABA Retirement Funds Program (the "Program")
P.O. Box 5142 • Boston, MA 02206-5142

Plan Administrator Line: (800) 752-6313
Website: www.abaretirement.com

1. EMPLOYER PLAN INFORMATION

(a) **Name of Employer Plan:**

This is the _____ (the "Plan").

(b) **Employer Plan Year (check one):**

(1) The Plan Year is the calendar year.

(2) The Plan Year ends ____ / ____ (enter the last day and month of the Employer's fiscal year).

(c) **Three Digit Employer Plan Number:** _____

(d) **Employer Plan Adoption Date (check one):**

(1) If the Employer is adopting this Employer Plan as a new plan, the Effective Date is _____.

(2) If the Employer is adopting this Employer Plan as an amended and restated version of an existing plan, the Effective Date of the amendment and restatement is _____. The original effective date of the plan was _____.

(e) **Special Effective Dates.** Notwithstanding Section 1(d) above, the following Sections of the Employer Plan shall be effective as of the dates set forth below:

Section:	Effective Date:

2. EMPLOYER

(a) **Employer Name:** _____

Address: _____

Contact's Name: _____

Telephone Number: _____

Facsimile Number: _____

Employer Tax I.D. Number: _____

(b) Plan Administrator. The Employer is the Plan Administrator. Please provide the names(s) and title(s) of the individual(s) authorized to act as, or on behalf of, the Plan Administrator:

(1) _____
Print Name Title

(2) _____
Print Name Title

(c) Employer's Form of Business (check one):

- (1) C Corporation: _____ (enter date of incorporation)
- (2) S Corporation: _____ (enter date of incorporation)
- (3) Partnership
- (4) Sole Proprietorship
- (5) Tax-Exempt Entity (as described in section 501(c)(3) of the Internal Revenue Code)
- (6) Limited Liability Company
- (A) Taxable as a C Corporation
- (B) Taxable as a Partnership
- (7) Other (must be a legal entity recognized under federal income tax laws):

3. ELIGIBILITY AND ENTRY DATES.

(a) Participation Requirements.

(1) **For Employer Contributions.** For purposes of receiving allocations of Employer contributions pursuant to Section 4, Eligible Employees can begin participation in the Employer Plan, after meeting the following participation requirements (**check one**):

- (A) No age and no service requirements.
- (B) Eligible Employees must have attained age _____ (**not to exceed 21**) and completed (**check one**):
- (i) _____ months of Service (**not to exceed 12 unless Vesting Schedule A, E or a more favorable D is selected in Section 5(b); but in no case to exceed 24**); or
- (ii) _____ Years of Eligibility Service (**not to exceed 1 unless Vesting Schedule A, E or a more favorable D is selected in Section 5(b); but in no case to exceed 2**).

Note: If no election is made, Eligible Employees who have attained age 21 and completed 1 Year of Eligibility Service can begin participation in the Employer Plan for purposes of receiving allocations of Employer contributions pursuant to Section 4.

(2) **For Elective Contributions.** For purposes of making Elective Contributions pursuant to Section 9 and Section 4.2(b) of the Plan, Eligible Employees can begin participation in the Employer Plan after meeting the following participation requirements (**check one**):

- (A) No age and no service requirements.
- (B) Eligible Employees must have attained age _____ (**not to exceed 21**) and completed (**check one**):
 - (i) _____ months of Service (**not to exceed 12**); or
 - (ii) _____ Years of Eligibility Service (**not to exceed 1**).

Note: If no election is made, Eligible Employees who have attained age 21 and completed 1 Year of Eligibility Service can begin participation in the Employer Plan for purposes of making Elective Contributions pursuant to Section 9 and Section 4.2(b) of the Plan.

(b) **Years of Eligibility Service.** If Box 3(a)(1)(B)(ii) or Box 3(a)(2)(B)(ii) is checked, for purposes of determining Years of Eligibility Service (as defined in Article 2(76) of the Plan), Hours of Service (as defined in Article 2(29) of the Plan) shall equal an Employee's actual Hours of Service (please note that Employer must keep appropriate records of actual hours worked) unless the Employer elects a different calculation method below (**check one**):

- (1) **Daily equivalency.** 10 Hours of Service for each day in which at least one Hour of Service is credited.
- (2) **Weekly equivalency.** 45 Hours of Service for each week in which at least one Hour of Service is credited.
- (3) **Monthly equivalency.** 190 Hours of Service for each month in which at least one Hour of Service is credited.

(c) **Employment Year.** If Box 3(a)(1)(B)(ii) or Box 3(a)(2)(B)(ii) is checked, for purposes of calculating Years of Eligibility Service, the Employment Year shall be the 12-month period beginning on the day on which an Employee performs his or her first Hour of Service upon his or her employment or reemployment by the Employer and each subsequent 12-month period beginning on any anniversary of that day unless the Employer elects otherwise below.

- (1) **Subsequent Plan Year Option.** If this option is selected, the initial Employment Year shall remain the same as above, but subsequent Employment Years shall be the 12-month period beginning on the first day of the first Plan Year which commences prior to the first anniversary of the day on which an Employee performs his or her first Hour of Service upon his or her employment or reemployment by the Employer.

Note: If the Subsequent Plan Year Option is selected, an Employee who is credited with 1,000 Hours of Service in both the initial Employment Year and the first Plan Year which commences prior to the first anniversary of the Employee's initial Employment Year will be credited with two (2) Years of Eligibility Service.

(d) Entry Dates. Eligible Employees who satisfy the participation requirements above shall become Participants on any following Entry Date. Entry Date shall mean the first day of the first and seventh month of each Plan Year after meeting the participation requirements, unless the Employer elects a different Entry Date below (**check one**):

- (1) The first day after meeting the participation requirements.
- (2) The first day of each month after meeting the participation requirements.
- (3) The first day of each Plan Year quarter after meeting the participation requirements.

4. EMPLOYER CONTRIBUTIONS. The Employer may, in its sole discretion, elect to make Employer contributions for any Plan Year, and any such Employer contributions shall be allocated to eligible Participants (all Participants who either are credited with at least 501 Hours of Service or are employed by the Employer on the last day of the Plan Year) in the proportion that each such Participant's Compensation for the Plan Year bears to the total Compensation of all such Participants for the Plan Year (a "Non-integrated Allocation Formula"), unless the Employer elects a different allocation formula below:

(a) Integrated Allocation Formula. If this option is selected, Employer contributions shall be allocated in the manner set forth in Section 5.2(c) of the Plan.

Note: An Employer who maintains any other Qualified Plan, including an Employer Plan, or "simplified employee pension plan" (as defined in section 408(k) of the Code) that provides for integrated contributions or benefits for any of the same Participants may not elect the Integrated Allocation Formula option.

(1) Integration Level. "Integration Level" shall mean the Taxable Wage Base (as defined in Section 5.2(d)(3) of the Plan), unless the Employer elects a lesser amount below.

- (A)** If this option is selected, Integration Level shall be (**check one**):
 - (i) _____ % (**not to exceed 100%**) of the Taxable Wage Base for the Plan Year; or
 - (ii) \$ _____ (**not to exceed the Taxable Wage Base**).

5. VESTING.

(a) Normal Retirement Age of 65. For purposes of determining a Participant's entitlement to the entire balance of his or her Accounts, a Participant's Normal Retirement Age shall be age 65 unless the Employer elects otherwise below.

- (1) **Earlier Normal Retirement Age.** If this option is selected, a Participant's Normal Retirement Age shall be age _____ (not less than 55 and not to exceed 65).

(b) **Vesting Schedule.** A Participant who terminates Service prior to Normal Retirement Age for reasons other than death or Disability shall be entitled to receive the Vested Portion in his or her Matching Contribution Account and/or Employer Account. The Vested Portion shall be determined by vesting schedule B unless the Employer elects a different vesting schedule below:

- (1) If this option is selected, the Vested Portion shall be determined by vesting schedule _____.

Years of Service	Percentage Vested				
	A	B	C	D	E
Less than one	0%	0%	0%	__%	100%
One but less than two	0%	0%	0%	__%	100%
Two but less than three	100%	20%	0%	__%	100%
Three but less than four	100%	40%	100%	__%	100%
Four but less than five	100%	60%	100%	__%	100%
Five but less than six	100%	80%	100%	__%	100%
Six or more	100%	100%	100%	__%	100%

Note: If Schedule D is elected, complete the schedule by showing the rate at which a Participant becomes vested. Schedule D must provide for a Vested Portion that is at every point in time equal to or greater than the Vested Portion prescribed under Schedule A, B or C, whichever is selected for comparison.

(c) **Service for Predecessor Employers.** Service shall not include service for any predecessor employer unless the Employer maintains the plan of such predecessor employer or the Employer elects otherwise below.

- (1) **Service Included.** If this option is selected, Service shall include service for the following predecessor employer(s):

(A) _____

(B) _____

(d) **Application of Forfeitures.** Amount forfeited by Participants shall be applied to reduce Employer contributions unless the Employer elects otherwise below:

- (1) If this option is selected, the amount forfeited by Participants shall be reallocated among eligible Participants.

6. TOP HEAVY PROVISIONS. The Employer Plan shall be subject to the Top-Heavy Plan requirements of Article 12 of the Plan and below for each Plan Year, if any, for which the Employer Plan is a Top-Heavy Plan.

(a) Top-Heavy Testing. The Trustee shall determine annually whether the Employer Plan is a Top-Heavy Plan, unless the Employer elects otherwise below.

- (1) If this option is selected, the Employer elects to test the Employer Plan itself to determine whether the Employer Plan is a Top-Heavy Plan.

(b) Present Value Determination. If the Employer maintains a standardized form of the ABA Member's Defined Benefit Pension Plan, the Present Value of Accrued Benefits as defined in Section 12.1(e) of the Plan shall be determined using the interest and mortality assumptions contained in such plan, unless the Employer elects otherwise below:

- (1) If this option is selected, the Employer will determine the Present Value of Accrued Benefits using the following assumptions:

(A) Interest rate _____ % per annum.

(B) Mortality Table: _____.

7. COMPENSATION.

(a) Definition of Compensation. For purposes of the Employer Plan, "Compensation" (as defined in Article 2(11) of the Plan) shall mean (except as otherwise specifically provided in the Plan) (check one):

(1) **Wages, Tips and Other Compensation Box on Form W-2.** As defined in Article 2(11)(a)(1) of the Plan.

(2) **Internal Revenue Code Section 3401(a) Wages.** As defined in Article 2(11)(a)(2) of the Plan.

(3) **415 Safe-Harbor Compensation.** As defined in Article 2(11)(a)(3) of the Plan.

(b) Exclusions from Compensation. If this option is selected, notwithstanding the definition selected above, "Compensation" shall not include reimbursement or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation and welfare benefits.

8. HIGHLY COMPENSATED EMPLOYEES. Any Employee who is a 5%-owner at any time during the current or prior Plan Year or earned Compensation in excess of \$90,000 (as indexed) for the prior Plan Year shall be a Highly Compensated Employee unless the Employer elects otherwise below.

- (a) **Calendar Year Election.** If this option is selected, only Employees who are 5%-owners at any time during the current or prior Plan Year or earned Compensation in excess of \$90,000 (as indexed) for the calendar year beginning with or within the prior Plan Year shall be Highly Compensated Employees.
- (b) **Top Paid Group Election.** If this option is selected, only Employees in the top 20% of Employees for the prior Plan Year (or, if the Calendar Year Election was made above, the calendar year beginning with or within the prior Plan Year) ranked by Compensation shall be Highly Compensated Employees.

9. ELECTIVE CONTRIBUTIONS. The Employer may elect to permit Eligible Employees to make Elective Contributions as follows (**check all that apply**):

- (a) **Eligibility for Elective Contributions.** If this option is selected, all Eligible Employees shall be permitted to make Elective Contributions to the Employer Plan after meeting the applicable participation requirements unless the Employer elects otherwise below.
 - (1) **Exclusion of Highly Compensated Employees.** If this option is selected, Participants who are Highly Compensated Employees will not be permitted to make Elective Contributions.
- (b) **Automatic Enrollment.** If this option is selected, all Eligible Employees who meet the applicable participation requirements above shall be deemed to have elected to make Elective Contributions in an amount equal to _____ % or \$ _____ of their Compensation unless and until a Participant affirmatively elects a different amount (including no amount) pursuant to Section 4.2(b) of the Plan.
- (c) **Safe Harbor Election.** If this option is selected, the Employer elects the safe harbors set forth in sections 401(k)(12) and 401(m)(11) of the Internal Revenue Code and the Employer Plan shall be deemed to satisfy the actual deferral percentage test of Section 4.2(e)(1) of the Plan and the actual contribution percentage test of Section 4.2(e)(2) of the Plan. If the Employer elects to permit Post-Tax Employee Contributions pursuant to Section 10 below and Section 4.3 of the Plan, then notwithstanding the preceding sentence, the actual contribution percentage test of Section 4.2(e)(2) of the Plan shall be applied to such Post-Tax Employee Contributions. If this option is selected, the Employer must complete the Safe Harbor 401(k) Plan Supplement.

Note: Participants who are eligible to make Elective Contributions pursuant to this Section 9 may also be eligible to receive a Top-Heavy Minimum Contribution pursuant to Article 12 of the Plan.

10. POST-TAX EMPLOYEE CONTRIBUTIONS.

- (a) **Post-Tax Employee Contributions.** If this option is selected, all Participants may elect to make Post-Tax Employee Contributions unless the Employer elects otherwise below.
- (1) **Exclusion of Highly Compensated Employees.** If this option is selected, Participants who are Highly Compensated Employees will not be permitted to make Post-Tax Employee Contributions.

11. MATCHING EMPLOYER CONTRIBUTIONS. If the Employer elects to permit Participants to make Elective Contributions, the Employer may also elect to make Matching Contributions which shall be allocated to Participants according to the following formulas (**check all that apply**):

- (a) **Matching Contributions on Elective Contributions.** If this option is selected, the Employer shall make Matching Contributions on behalf of each Participant who makes Elective Contributions as follows (**check one**):
- (1) **Fixed Matching Contributions.** The Employer shall make a Matching Contribution in an amount equal to _____ % of a Participant's Elective Contributions not in excess of _____ % or \$ _____ of a Participant's Compensation for the Plan Year; or
- (2) **Tiered Matching Contributions.**
- (A) The Employer shall make a Matching Contribution in an amount equal to _____ % of a Participant's Elective Contributions not in excess of _____ % or \$ _____ of a Participant's Compensation for the Plan Year; and
- (B) _____ % of a Participant's Elective Contributions over _____ % or \$ _____ of a Participant's Compensation but not in excess of _____ % or \$ _____ of a Participant's Compensation for the Plan Year.

Note: The rate of Tiered Matching Contributions must decrease as the rate of Elective Contributions increases.

- (b) **Discretionary Matching Contributions on Elective Contributions.** If this option is selected, the Employer may make Matching Contributions on behalf of Participants who make Elective Contributions in an amount determined by the Employer in its sole discretion for each Plan Year.

Note: If an Employer has not made an election with respect to Sections 11(a) – (b) above, the Employer may make Matching Contributions on behalf of Participants who make Elective Contributions in an amount determined by the Employer in its sole discretion for each Plan Year.

- (c) **Eligibility for Matching Contributions.** If the Employer elects to make Matching Contributions, all Participants shall be entitled to receive an allocation of Matching Contributions for a Plan Year unless the Employer elects otherwise below.

- (1) **Non-Highly Compensated Requirement.** If this option is elected, only Participants who are Non-Highly Compensated Employees will receive an allocation of Matching Contributions.
- (d) **Matching Contributions on Catch-Up Contributions.** If this option is elected and the Employer elects to make Matching Contributions, the Employer shall make Matching Contributions with respect to Catch-Up Contributions and Elective Contributions pursuant to this Section 11.

12. NONDISCRIMINATION TESTING RULES: To the extent an Employer has not made the Safe Harbor Election in Box 9(c) or an Employer has made the Safe Harbor Election in Box 9(c) but elects to permit Post-Tax Employee Contributions under the Employer Plan, then for purposes of applying the actual deferral percentage or actual contribution percentage tests, the following rules shall apply.

(a) **Prior Plan Year Data Default** - For purposes of applying the nondiscrimination test in Section 4.2(e) of the Plan, the actual deferral percentage and the actual contribution percentage of Highly Compensated Employees for the Plan Year shall be compared to the actual deferral percentage and the actual contribution percentage of Non-Highly Compensated Employees for the immediately preceding Plan Year unless the Employer elects otherwise below (**check all that apply**):

- (1) **Current Year Testing Method For Actual Deferral Percentage Test.** If this option is selected, the Employer elects to use the actual deferral percentage of Non-Highly Compensated Employees for the same Plan Year in applying the actual deferral percentage test.
- (2) **Current Year Testing Method For Actual Contribution Percentage Test.** If this option is selected, the Employer elects to use the actual contribution percentage of Non-Highly Compensated Employees for the same Plan Year in applying the actual contribution percentage test.

Note: If an Employer elects to use the current year testing method for a Plan Year, the Employer may not elect to use the prior year testing method for a subsequent Plan Year until the Employer Plan has used the current year testing method for each of the preceding 5 Plan Years (or if lesser, the number of Plan Years the Employer Plan has been in existence) or if, as a result of a merger or acquisition described in section 410(b)(6)(C)(i) of the Code, the Employer maintains both a plan using the prior year testing method and a plan using the current year testing method and such change is made within the transition period described in section 410(b)(6)(C)(ii) of the Code.

Note: Notwithstanding any Employer election to the contrary, the current year testing method will be used for purposes of applying the actual contribution percentage test if the actual deferral percentage test is deemed satisfied. Furthermore, to the extent the Employer elects the current year testing method for purposes of the actual deferral percentage test or the actual contribution percentage test, but not both, Elective Contributions may not be used to satisfy the actual contribution percentage test and Qualified Matching Contributions may not be used to satisfy the actual deferral percentage test.

(b) Initial Year Testing Method. If this is a new Employer Plan, other than a successor plan or a plan that is aggregated as described in section 1.401(k)-2(c)(2)(ii) or 1.401(m)-2(c)(2)(ii) of the Income Tax Regulations, the actual contribution percentage test and the actual deferral percentage test shall be applied assuming a 3% actual contribution and actual deferral percentage for Non-Highly Compensated Employees unless the Employer elects otherwise below (**check all that apply**):

- (1) **Actual Percentages Method For Actual Deferral Percentage Test.** If this option is selected, the Employer elects to use the actual deferral percentage of Non-Highly Compensated Employees for the initial Plan Year for purposes of applying the actual deferral percentage test.
- (2) **Actual Percentages Method For Actual Contribution Percentage Test.** If this option is selected, the Employer elects to use the actual contribution percentage of Non-Highly Compensated Employees for the initial Plan Year for purposes of applying the actual contribution percentage test.

13. PARTICIPANT LOANS. If the Employer has adopted a loan program, Participant loans shall be made in accordance with Article 7 of the Plan.

14. IN-SERVICE WITHDRAWALS. Participants may make withdrawals prior to termination of employment in accordance with Article 7 of the Plan under the following circumstances (**check all that apply**):

- (a) **Hardship Withdrawals.** If this option is selected, Participants may apply to withdraw from their Employer Account and Matching Contribution Account an amount required to satisfy a hardship in accordance with Section 7.2 of the Plan.
- (b) **401(k) Hardship Withdrawals.** If this option is selected and the Employer has adopted the 401(k) arrangement under Section 4.2 of the Plan, Participants may also apply to withdraw from their 401(k) Salary Deferral Account and Roth 401(k) Contribution Account, as applicable, an amount required to satisfy a hardship in accordance with Section 7.2(a) and (c) of the Plan.
- (c) **Age 59½ Withdrawal.** Participants may elect to receive a distribution of the Vested Portion of their Employer Account and Matching Contribution Account upon attaining age 59½ unless the Employer elects to permit such withdrawals earlier below.
- (1) **Prior to Age 59½ Election.** If this option is selected, Participants may elect to receive a distribution of the Vested Portion of their Employer Account and Matching Contribution Account earlier upon attainment of age _____ (**not earlier than age 55**).
- (d) **Withdrawals After 5 Years of Plan Participation.** If this option is selected, Participants may elect to receive a distribution of the Vested Portion of their Employer Account and Matching Contribution Account upon completion of 5 years of participation in the Plan.

15. DEFAULT INVESTMENT FUND. Amounts contributed to a Participant's Accounts for which a Participant has failed to specify an Investment Option, amounts forfeited by Participants prior to reallocation and amounts for which the Employer is responsible for making an investment election shall be invested in the following Investment Option: _____

16. PAIRED PLANS.

(a) *Minimum Contribution with Paired Plans.* If an Employer maintains this Employer Plan and another Employer Plan by means of a different standardized Adoption Agreement under the Plan or if the Employer also adopts a standardized form of the ABA Member's Defined Benefit Pension Plan as paired plans, the following rule shall apply (**check one**):

(1) *Each Paired Plan.* If this option is selected, the Employer shall make a Minimum Contribution to both Employer Plans; or

(2) *Identical Elections.* If this option is selected, the Employer agrees to make identical elections in this Adoption Agreement and in _____ (**enter name of other standardized Adoption Agreement under the Plan**) with respect to the participation requirements and the entry date under Section 3.

17. RELIANCE ON OPINION LETTER AND ACKNOWLEDGEMENTS

An Employer may rely on an opinion letter issued by the Internal Revenue Service as evidence that this Employer Plan is qualified under section 401(a) of the Code, except to the extent provided in Revenue Procedure 2005-16. An Employer who has ever maintained or who later adopts any plan (including a welfare benefit fund, as defined in section 419(e) of the Internal Revenue Code, which provides post-retirement medical benefits allocated to separate accounts for Key Employees, or an "individual medical account", as defined in section 415(l)(2) of the Internal Revenue Code) in addition to this Employer Plan other than standardized forms of the Plan and/or the American Bar Association Members Defined Benefit Pension Plan as paired plans, may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of sections 415 and 416 of the Code. If the Employer who adopts or maintains multiple plans (other than paired plans) wishes to obtain reliance with respect to the requirements of sections 415 and 416 of the Code, application for a determination letter should be made to Employee Plans Determinations of the Internal Revenue Service. The Employer may not rely on the opinion letter in certain other circumstances, which are specified in the opinion letter issued with respect to the Plan or in Revenue Procedure 2005-16.

Failure to fill out the Adoption Agreement properly may result in disqualification of the Plan. The Employer acknowledges it has (i) received a copy of the current prospectus covering units representing pro rata beneficial interests in the collective investment funds and the portfolios established under the Collective Trust as investment options under the ABA Retirement Funds Program (the "Program") and understands its provisions, and (ii) determined that the fees described therein are reasonable for the services provided by the Program. The Employer represents that the sole practitioner, or at least one partner or shareholder, is a member or associate of the American Bar Association ("ABA") or of a Qualified Bar Association (or that the Employer is otherwise eligible to adopt the Plan in accordance with the definition of "Employer" in the Plan).

This Adoption Agreement may be used only in conjunction with the American Bar Association Members Retirement Plan, Basic Plan Document No. 01. The Employer will act as plan administrator and as such will fulfill the responsibilities allocated to the Employer and plan administrator by the Employer Plan, including the reporting and disclosure requirements of the Internal Revenue Service and the Department of Labor. The Employer acknowledges that the ABA Retirement Funds ("ABA/RF"), the Trustee and their designated agents shall have no liability for actions taken on the basis of information provided to them by the Employer. ABA/RF shall inform the Employer of any amendments made to the Plan or of the discontinuance or abandonment of the Plan.

18. SPONSOR INFORMATION

ABA Retirement Funds Program
Post Office Box 5142
Boston, Massachusetts 02206
(800) 348-2272

19. SIGNATURE

IN WITNESS WHEREOF, the Employer named above hereby adopts the American Bar Association Members Retirement Plan by causing this Adoption Agreement to be executed as of the date set forth below.

Signature

By: _____

Title: _____

Date: _____