



# STANDARDIZED PROFIT SHARING PLAN WITH 401(k) ARRANGEMENT, INCLUDING SAFE HARBOR OPTION ADOPTION AGREEMENT 03-001

## 1. EMPLOYER PLAN INFORMATION

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

This is the \_\_\_\_\_ 401(k) Plan (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 \_\_\_\_ / \_\_\_\_ / \_\_\_\_  
**(no earlier than the latest of (1) January 1, 2007, (2) the first day of the Plan Year in which the Plan is adopted and (3) the date on which the portion of the Employer Plan permitting Elective Contributions is adopted).**

(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 \_\_\_\_ / \_\_\_\_ / \_\_\_\_ . **(no earlier than the latest of (1) January 1, 2007, (2) the first day of the Plan Year in which the Plan is adopted and (3) the date on which the portion of the Employer Plan permitting Elective Contributions is adopted).**

**(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: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_ - \_\_\_\_ Facsimile Number: (\_\_\_\_) \_\_\_\_ - \_\_\_\_

Email Address: \_\_\_\_\_

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) Name: \_\_\_\_\_ Title: \_\_\_\_\_

(2) 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) or (6) of the 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

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(a) **Participation Requirements:**

(1) **For Nonelective Contributions.** For purposes of receiving allocations of Nonelective Contributions pursuant to Section 4, Eligible Employees who are age 21 and have completed 1 Year of Eligibility Service will become Participants in the Plan upon the Entry Date (as elected), unless the Employer elects different participation requirements below:

(A) **Age Requirement (check one):**

(i)  No age requirement; or

(ii)  Eligible Employees must have attained age \_\_\_\_\_ (not to exceed 21).

(B) **Service Requirement (check one):**

(i)  No service requirement;

(ii)  \_\_\_\_\_ 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

(iii)  \_\_\_\_\_ 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).

(2) **For Elective Contributions.** For purposes of making Elective Contributions pursuant to Section 9 and Section 4.2(b) of the Plan, Eligible Employees who are age 21 and have completed 1 Year of Eligibility Service will become Participants in the Plan upon the Entry Date (as elected below), unless the Employer elects different participation requirements below:

(A) **Age Requirement (check one):**

(i)  No age requirement; or

(ii)  Eligible Employees must have attained age \_\_\_\_\_ (not to exceed 21).

**(B) Service Requirement (check one):**

- (i)  No service requirement;
- (ii)  \_\_\_\_\_ months of Service (**not to exceed 12**); or
- (iii)  \_\_\_\_\_ Years of Eligibility Service (**not to exceed 1**).

**(b) Years of Eligibility Service.** If Box 3(a)(1)(B)(iii) or Box 3(a)(2)(B)(iii) is checked, for purposes of determining Years of Eligibility Service (as defined in Article 2(86) of the Plan), Hours of Service (as defined in Article 2(30) 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)(iii) or Box 3(a)(2)(B)(iii) 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.** 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.** An Eligible Employee shall become a Participant on his or her Entry Date. Entry Date shall mean the first day of the first and seventh month of each Plan Year coincident with, or next following, the satisfaction of the participation requirements, unless the Employer elects a different Entry Date below (**check one**):

- (1)  The first day coincident with satisfaction of the participation requirements.
- (2)  The first day of each month coincident with, or next following, satisfaction of the participation requirements.
- (3)  The first day of each Plan Year quarter coincident with, or next following, satisfaction of the participation requirements.

#### **4. NONELECTIVE CONTRIBUTIONS**

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The Employer may, in its sole discretion, elect to make Nonelective Contributions for any Plan Year, and any such Nonelective 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.** Nonelective 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)  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.** 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)  The Vested Portion of the Matching Contribution Account and/or Employer Account shall be determined by vesting schedule \_\_\_\_\_. (See Section 12 regarding the Vested Portion of QACA Safe Harbor Contributions).

Percentage Vested					
Years of Service	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) **Predecessor Employers.** An Employee's Service and Years of Eligibility Service shall not include employment with any predecessor employer unless the Employer maintains the plan of such predecessor employer, or the Employer elects otherwise below:

(1)  **Employment Included.** An Employee's Service and Years of Eligibility Service shall include employment with the following predecessor employer(s):

(A) \_\_\_\_\_

(B) \_\_\_\_\_

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

(1)  The amount forfeited by Participants shall be reallocated among eligible Participants.

## 6. TOP HEAVY PROVISIONS

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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)  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)  The Employer will determine the Present Value of Accrued Benefits using the following assumptions:
- (A)  Interest rate \_\_\_\_\_% per annum.
- (B)  Mortality Table: \_\_\_\_\_ .

## 7. COMPENSATION

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- (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.** Notwithstanding the definition selected above, "Compensation" shall not include reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation and welfare benefits.

## 8. HIGHLY COMPENSATED EMPLOYEES

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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.** 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.** 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

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The Employer may elect to permit Eligible Employees to make Elective Contributions beginning on the Entry Date, as follows **(check all that apply)**:

- (a)  **Eligibility for Elective Contributions.** 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.** Participants who are Highly Compensated Employees will not be permitted to make Elective Contributions.

(b)  **Automatic Enrollment.** Each Eligible Employee who meets the applicable participation requirements above shall be deemed to have elected to make Elective Contributions in an amount equal to \_\_\_\_\_% or \$\_\_\_\_\_ (not to exceed in the aggregate \$17,500, as adjusted for cost-of-living increases in accordance with section 402(g)(1) of the Code) of his Compensation unless and until he affirmatively elects a different amount (including no amount) pursuant to Section 4.2(b) of the Plan.

**Automatic Escalation.** The above automatic contribution percentage shall increase by \_\_\_\_\_% each Plan Year at the beginning of the Plan Year, to a maximum of \_\_\_\_\_% (not to exceed in the aggregate \$17,500, as adjusted for cost-of-living increases in accordance with section 402(g)(1) of the Code).

(c)  **Automatic Enrollment Under An Eligible Automatic Contribution Arrangement.** An Employer may elect to implement an eligible automatic contribution arrangement, as described in Section 4.2(b)(3) of the Plan, only at the beginning of a Plan Year.

(1)  **Automatic Enrollment.** Each Eligible Employee who meets the applicable participation requirements above shall be deemed to have elected to make Elective Contributions in an amount equal to \_\_\_\_\_% (not to exceed in the aggregate \$17,500, as adjusted for cost-of-living increases in accordance with section 402(g)(1) of the Code) of his Compensation unless and until he affirmatively elects a different amount (including no amount) pursuant to Section 4.2(b) of the Plan.

(2) **Withdrawals.** Unless elected otherwise below, Elective Contributions made pursuant to Section 9(c)(1) above, as adjusted for any investment gains or losses, may be withdrawn by the Participant within 90 days of such first Elective Contribution and such withdrawal shall be deemed an election not to contribute Elective Contributions to the Employer Plan:

The withdrawals described above shall not be permitted.

**Note:** If the Employer Plan provides for an immediate Entry Date under Section 3(e)(1), the Employer Plan must permit the withdrawals under Section 9(c)(2).

**Note:** Employers who adopt an eligible automatic contribution arrangement must elect a qualified default investment alternative as the default fund under the Employer Plan.

**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

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(a)  **Post-Tax Employee Contributions.** All Participants may elect to make Post-Tax Employee Contributions, unless the Employer elects otherwise below:

(1)  **Exclusion of Highly Compensated Employees.** Participants who are Highly Compensated Employees will not be permitted to make Post-Tax Employee Contributions.

## 11. MATCHING EMPLOYER CONTRIBUTIONS

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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 as follows (check all that apply):

(a)  **Matching Contributions Formulas. (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 \$\_\_\_\_\_ (not to exceed in the aggregate \$17,500, as adjusted for cost-of-living increases in accordance with section 402(g)(1) of the Code) 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 \$\_\_\_\_\_ (not to exceed in the aggregate \$17,500, as adjusted for cost-of-living increases in accordance with section 402(g)(1) of the Code) 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 \$\_\_\_\_\_ (not to exceed in the aggregate \$17,500, as adjusted for cost-of-living increases in accordance with section 402(g)(1) of the Code) 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.** If an Employer has not made an election with respect to Section 11(a) 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.** Only Participants who are Non-Highly Compensated Employees will receive an allocation of Matching Contributions.

(d)  **Matching Contributions on Catch-Up Contributions.** If 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. SAFE HARBOR OPTIONS

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An Employer may elect to implement a safe harbor option only at the beginning of a Plan Year. The definition of Compensation elected in Section 7 must satisfy the nondiscrimination requirements of section 414(s) of the Code. For purposes of Section 12, the term "Participant" shall include each Eligible Employee who has satisfied the participation and Entry Date requirements, regardless of whether such Eligible Employee has elected to make Elective Contributions under the Employer Plan.

(a)  **Safe Harbor Under Section 4.2(g) of the Plan.** If the Employer checks this box, the safe harbors under sections 401(k)(12) and/or 401(m)(11) of the Code and the requirements set forth in Section 4.2(g) of the Plan shall apply.

(1)  **Actual Deferral Percentage Test.** Subject to the requirements of Section 4.2(g) of the Plan, the Employer shall be deemed to satisfy the actual deferral percentage test of Section 4.2(e)(1) of the Plan by making a Safe Harbor Contribution to the Employer Plan as follows (choose one):

(A)  **Basic Safe Harbor Matching Contributions.** The Employer shall make a basic Safe Harbor Matching Contribution equal to 100% of a Participant's Elective Contributions not in excess of 3% of a Participant's Compensation for the Plan Year and 50% of a Participant's Elective Contributions over 3% but not in excess of 5% of a Participant's Compensation for the Plan Year.

(B)  **Enhanced Safe Harbor Matching Contributions.** The Employer shall make an enhanced Safe Harbor Matching Contribution equal to:

(i) \_\_\_\_\_% of a Participant's Elective Contributions not in excess of \_\_\_\_\_% of a Participant's Compensation for the Plan Year; **OR**

(ii) \_\_\_\_\_% of a Participant's Elective Contributions not in excess of \_\_\_\_\_% of a Participant's Compensation for the Plan Year plus \_\_\_\_\_% of a Participant's Elective Contributions over \_\_\_\_\_% but not in excess of \_\_\_\_\_% of a Participant's Compensation for the Plan Year.

**Note:** At any rate of Elective Deferrals, the amount of the enhanced Safe Harbor Matching Contributions must be at least equal to the aggregate amount of basic Safe Harbor Matching Contributions that would be provided pursuant to (A) above. The rate of match on enhanced Safe Harbor Matching Contributions cannot increase as the rate of Elective Contributions increases. Enhanced Safe Harbor Matching Contributions must not be made in excess of 6% of a Participant's Compensation in order to satisfy the Actual Contribution Test under Section 12(a)(2) below.

Safe Harbor Matching Contributions cannot be made for any Participant who is a Highly Compensated Employee at any rate of Elective Contributions or Post-Tax Employee Contributions at a rate greater than that



for any Participant who is a not a Highly Compensated Employee. Notwithstanding any provision of the Plan to the contrary, a Safe Harbor Matching Contribution shall be made with respect to Catch-Up Contributions in addition to Elective Contributions to the extent required by Income Tax Regulations.

(C)  **Safe Harbor Nonelective Employer Contribution.** The Employer shall make a Safe Harbor Nonelective Employer Contribution equal to \_\_\_\_\_% (**not less than 3%**) of each Participant's Compensation.

(2)  **Actual Contribution Percentage Test.** The Employer Plan shall be deemed to satisfy the actual contribution percentage test of Section 4.2(e)(2) of the Plan if the Employer Plan is deemed to satisfy the actual deferral percentage test and Matching Contributions are made on behalf of Participants for the Plan Year that (i) are not made with respect to Elective Contributions and Post-Tax Employee Contributions in excess of 6% of a Participant's Compensation, (ii) are not made for any Participant who is a Highly Compensated Employee at any rate of Elective Contributions or Post-Tax Employee Contributions at a rate greater than that for any Participant who is a not a Highly Compensated Employee, (iii) are not made in a manner which provides a higher rate of match as a Participant's rate of Elective Contributions or Post-Tax Employee Contributions increases and (iv) if discretionary, are not made on behalf of any Participant for a Plan Year in excess of 4% of such Participant's Compensation.

**Note:** If an Employer Plan permits Post-Tax Employee Contributions, notwithstanding the Employer's election above, the actual contribution percentage test described in Section 4.2(e)(2) of the Plan shall be applied to such Post-Tax Employee Contributions.

(3) **Eligibility for Safe Harbor Contributions.** All Participants shall be entitled to receive an allocation of Safe Harbor Contributions for a Plan Year unless the Employer elects otherwise below:

(A)  **Non-Highly Compensated Requirement.** Only Participants who are not Highly Compensated Employees shall receive an allocation of Safe Harbor Contributions.

(b)  **QACA Safe Harbor Under Section 4.2(h) of the Plan.** If the Employer checks this box, the safe harbors under sections 401(k)(13) and/or 401(m)(12) of the Code and the requirements set forth in Section 4.2(h) of the Plan shall apply.

**Note:** Employers who adopt a QACA Safe Harbor Plan must elect a qualified default investment alternative as the default fund under the Employer Plan.

(1)  **Automatic Enrollment.** All Employees eligible to make Elective Contributions shall be deemed to have elected to make Elective Contributions in an amount equal to \_\_\_\_\_ (**at least 3 and no more than 10**)% of their Compensation through the end of the Plan Year beginning after the Plan Year in which the first automatic Elective Contribution is made with respect to such Employee, unless and until such Employee affirmatively elects (or has affirmatively elected prior to the effective date of this Adoption Agreement) a different amount (including no amount) pursuant to Section 4.2(b) of the Plan. If no such affirmative election is made, such percentage shall increase by \_\_\_\_\_ (**at least 1 and no more than 10 in total**)% each Plan Year thereafter until it reaches \_\_\_\_\_ (**at least 6 and no more than 10**)%.

(2) **Withdrawals of Automatic Elective Contributions.** Unless elected otherwise below, Elective Contributions made pursuant to Section (b)(1) above, as adjusted for any investment gains or losses, may be withdrawn by the Participant within 90 days of the first Elective Contribution made pursuant to Section (b)(1) above.

(A)  The withdrawals described above shall not be permitted.

(3)  **Actual Deferral Percentage Test.** Subject to the requirements of Section 4.2(h) of the Plan, the Employer shall be deemed to satisfy the actual deferral percentage test of Section 4.2(e)(1) of the Plan by making a QACA Safe Harbor Contribution to the Employer Plan as follows (**choose one**):

(A)  **Basic QACA Safe Harbor Matching Contributions.** The Employer shall make a basic QACA Safe Harbor Matching Contribution equal to 100% of a Participant's Elective Contributions not in excess of 1% of a Participant's Compensation for the Plan Year and 50% of a Participant's Elective Contributions over 1% but not in excess of 6% of a Participant's Compensation for the Plan Year.



(B)  **Enhanced QACA Safe Harbor Matching Contributions.** The Employer shall make an enhanced QACA Safe Harbor Matching Contribution equal to:

(i) \_\_\_\_\_% of a Participant's Elective Contributions not in excess of \_\_\_\_\_% of a Participant's Compensation for the Plan Year; **OR**

(ii) \_\_\_\_\_% of a Participant's Elective Contributions not in excess of \_\_\_\_\_% of a Participant's Compensation for the Plan Year plus \_\_\_\_\_% of a Participant's Elective Contributions over \_\_\_\_\_% but not in excess of \_\_\_\_\_% of a Participant's Compensation for the Plan Year.

**Note:** At any rate of Elective Deferrals, the amount of the enhanced QACA Safe Harbor Matching Contributions must be at least equal to the aggregate amount of basic QACA Safe Harbor Matching Contributions that would be provided pursuant to (A) above. The rate of match on enhanced QACA Safe Harbor Matching Contributions cannot increase as the rate of Elective Contributions increases.

QACA Safe Harbor Matching Contributions cannot be made for any Participant who is a Highly Compensated Employee at any rate of Elective Contributions or Post-Tax Employee Contributions at a rate greater than that for any Participant who is not a Highly Compensated Employee. Notwithstanding any provision of the Plan to the contrary, a QACA Safe Harbor Matching Contribution shall be made with respect to Catch-Up Contributions in addition to Elective Contributions to the extent required by Income Tax Regulations.

(C)  **QACA Safe Harbor Nonelective Employer Contribution.** The Employer shall make a QACA Safe Harbor Nonelective Employer Contribution equal to \_\_\_\_\_% (**not less than 3%**) of each Participant's Compensation.

(4)  **Actual Contribution Percentage Test.** The Employer Plan shall be deemed to satisfy the actual contribution percentage test Section 4.2(e)(2) of the Plan if the Employer Plan is deemed to satisfy the actual deferral percentage test and Matching Contributions are made on behalf of Participants for the Plan Year that (i) are not made with respect to Elective Contributions and Post-Tax Employee Contributions in excess of 6% of a Participant's Compensation, (ii) are not made for any Participant who is a Highly Compensated Employee at any rate of Elective Contributions or Post-Tax Employee Contributions at a rate greater than that for any Participant who is not a Highly Compensated Employee, (iii) are not made in a manner which provides a higher rate of match as a Participant's rate of Elective Contributions or Post-Tax Employee Contributions increases and (iv) if discretionary, are not made on behalf of any Participant for a Plan Year in excess of 4% of such Participant's Compensation.

**Note:** If an Employer Plan permits Post-Tax Employee Contributions, notwithstanding the Employer's election above, the actual contribution percentage test described in Section 4.2(e)(2) of the Plan shall be applied to such Post-Tax Employee Contributions.

(5) **Eligibility For QACA Safe Harbor Contribution.** All Participants shall be entitled to receive an allocation of QACA Safe Harbor Contributions for a Plan Year unless the Employer elects otherwise below:

(A)  **Non-Highly Compensated Requirement.** Only Participants who are Non-Highly Compensated Employees shall receive an allocation of QACA Safe Harbor Contributions.

(6) **Vesting Of QACA Safe Harbor Contributions.** A Participant whose Service terminates prior to Normal Retirement Age for reasons other than death or Disability shall be fully vested in his or her QACA Safe Harbor Contributions upon completion of \_\_\_\_\_ (**no more than 2**) years of Service.

### 13. NONDISCRIMINATION TESTING RULES

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To the extent (i) an Employer has not elected a safe harbor option in Section 12 or (ii) an Employer has so elected but permits 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.** 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.** 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.** 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.** 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.

### 14. PARTICIPANT LOANS

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Participant loans shall be made in accordance with Article 7 of the Plan if elected by the Employer as follows:

- (a)  **Loans to Participants Are Allowed.**
- (b)  **Loans to Participants Are Not Allowed.**

## 15. IN-SERVICE WITHDRAWALS

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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.** 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 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.** 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.** 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.
- (e)  **Withdrawals After 2 Years of Plan Accumulation.** Participants may elect to receive a distribution of the Vested Portion of their Employer Account and Matching Contribution Account after the contributions therein have accumulated at least 2 years.
- (f)  **In-Plan Roth Rollovers.** Participants may elect to make an in-plan Roth rollover, in accordance with Section 6.6 of the Plan.

**Note:** In order to elect this Section 15(f), the Employer must also elect Section 9(a), Eligibility for Elective Contributions.

## 16. DEFAULT INVESTMENT FUND

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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: \_\_\_\_\_.

**Note:** If the Employer Plan's default investment is a "qualified default investment alternative," as defined in section 404(c)(5) of ERISA, the Employer shall comply with the requirements thereof. Accordingly, the Employer shall provide to each Participant a comprehensive notice regarding the default investment alternative and the Participant's right to direct the investment of his or her Account, written in a manner calculated to be understood by the average Participant within a reasonable period of at least 30 days before the beginning of the Plan Year (or, in the case of an Eligible Employee who becomes a Participant during the Plan Year, by the day on which such Eligible Employee becomes a Participant, provided that the withdrawal described in Section 9(c)(2) and Section 12(b)(2) is available, and if not, at least 30 days prior to such date or the date of the first default investment) or within such other time frame permitted by applicable Income Tax Regulations.

## 17. RELIANCE ON OPINION LETTER AND ACKNOWLEDGEMENTS

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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 2011-49. 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 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 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 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 2011-49.

Failure to properly fill out the Adoption Agreement may result in disqualification of the Plan. The Employer acknowledges that (i) by executing the Adoption Agreement, it has adopted the Plan and the Trust, which incorporates by reference the terms of the Collective Trust, and that by doing so, it has appointed the trustee of the Collective Trust as a discretionary trustee as provided under section 403(a) of ERISA, (ii) it has received a copy of the current prospectus or other disclosure documents 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 has read and understands its provisions, and (iii) it has 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. 03. 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

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ABA Retirement Funds  
c/o ABA Retirement Funds Program  
Post Office Box 55072  
Boston, Massachusetts 02205-5072  
800.348.2272

## 19. CONSENT TO DELIVERY TO EMPLOYER OF FINANCIAL STATEMENTS, ANNUAL DISCLOSURE DOCUMENT AND OTHER DOCUMENTS, NOTICES, AND COMMUNICATIONS ADDRESSED TO THE EMPLOYER VIA E-MAIL OR THROUGH ACCESSING AN INVESTOR WEB PORTAL.

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The Collective Trust, the Trustee, the Program Recordkeeper and/or their respective agents deliver to the Employer annual audited financial statements, an annual disclosure document and other documents, notices, and communications addressed to the Employer. Unless the box below is checked, the Employer hereby consents to receive financial statements, the annual disclosure document and supplements thereto, and any other Program-related documents, notices, or other communications addressed to the Employer via e-mail to the Employer's email address set forth in Section 2 above or through accessing an investor web portal. It is the Employer's affirmative responsibility to notify the Program in writing (at the address set forth in Section 18 above or by email at [contactus@abaretirement.com](mailto:contactus@abaretirement.com)) of any change in its email address. The Collective Trust, the Trustee, the Program Recordkeeper and/or their respective agents in their sole discretion will determine whether Program-related documents, notices and other communications addressed to the Employer will be delivered in hard copy via postal mail or via e-mail or through posting such information to an investor web portal. In addition, the Employer acknowledges that there are risks, such as system outages or interception of electronic communications, that are associated with electronic delivery and agrees that none of the Collective Trust, the Trustee, the ABA RF, the Program Recordkeeper or any of their respective agents will be liable for such risks. The Employer may revoke its consent to receive Program-related documents, notices and other communications via e-mail or through accessing an investor web portal at any time by written notice to the Program (at the address set forth in Section 18 above or by email at [contactus@abaretirement.com](mailto:contactus@abaretirement.com)) requesting that such documents, notices, or other communications be sent in hard copy via postal mail. This consent does not apply to participant elections.

Unless the box below is checked, the Employer consents to receiving all Program-related documents, notices and other communications addressed to the Employer via e-mail or through accessing an investor web portal as described above. The e-mail or web portal will identify the significance of information (including identification of the subject matter), and provide any instructions needed to access the document, in a manner that is readily understandable. In addition, even if a Program-related document, notice or other communication is provided via email or a web portal, the Employer, at any time upon request to the Program (at the address or phone number set forth in Section 18 above or by email at [contactus@abaretirement.com](mailto:contactus@abaretirement.com)) may receive, at no charge, the applicable Program-related document, notice or other communication in writing on paper.

The undersigned does NOT consent to the delivery of Program-related documents, notices and other communications addressed to the Employer via e-mail or through accessing an investor web portal and instead wishes to receive such documents, notices and other communications in hard copy via postal mail.

**19. SIGNATURE**

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IN WITNESS WHEREOF, the Employer named above hereby adopts the (i) American Bar Association Members Retirement Plan and (ii) American Bar Association Members Retirement Trust by causing this Adoption Agreement 03-001 to be executed as of the date set forth below.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

SAMPLE