

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Human Resources

**AGENDA DATE:** **March 16, 2021**

**PUBLIC HEARING DATE:**

**CONTACT PERSON NAME AND PHONE NUMBER:** Araceli Guerra, Managing Director – Human Resources (915)212-1401

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:** **Set the Standard for Sound Governance and Fiscal Management**

**SUBGOAL:** Strategic Plan subsection 6.3 - Implement programs to reduce organizational risk.

**SUBJECT:**

Authorize the City Manager to sign the restated 457(b) Plan Document that adopts and approves the Prudential Retirement Specimen Governmental 457(b) Plan Adoption Agreement effective February 1, 2021, with the automatic enrollment provisions contained therein being retroactively effective as of September 1, 2015, the date that the City instituted that program.

**BACKGROUND / DISCUSSION:**

457(b) Plan Document was restated to include the Auto Enrollment feature for new employees.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



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Araceli Guerra, Managing Director, Human Resources

**RESOLUTION**

**WHEREAS**, pursuant to Section 457(b) of the Internal Revenue Code, as amended, employers may create a tax deferred compensation plan whereby the employer may make tax deferred contributions to the deferred compensation plan for the benefit of its employees (a “457(b) Plan”);

**WHEREAS**, the City desires to amend and restate the City’s 457(b) Plan in order to comply with current federal law.

**NOW, THEREFORE, BE IT RESOLVED:**

1. **THAT** the City hereby adopts and approves the Prudential Retirement Specimen Governmental 457(b) Plan Adoption Agreement effective February 1, 2021, with the automatic enrollment provisions contained therein being retroactively effective as of September 1, 2015, the date that the City instituted that program; and
2. **THAT** the City Manager be authorized to sign the Plan Documents and any other documents necessary to effectuate this approval.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.


**CITY OF EL PASO**

\_\_\_\_\_  
 Oscar Leeser  
 Mayor

**ATTEST:**

\_\_\_\_\_  
 Laura D. Prine  
 City Clerk

**APPROVED AS TO FORM:**

  
 \_\_\_\_\_  
 Victoria Hayslett  
 Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
 \_\_\_\_\_  
 Araceli Guerra  
 Managing Director Internal Services

**CITY OF EL PASO 457(b) DEFERRED COMPENSATION PLAN FOR PUBLICEMPLOYEES  
PARTICIPANT LOAN POLICY**

City of El Paso 457(b) Deferred Compensation Plan for Public Employee permits loans to be made to Participants, but not to Participants whose employment has terminated or who are Beneficiaries or an alternate payee under a Qualified Domestic Relations Order (QDRO), pursuant to a written loan policy. All references to Participants in this loan policy include Participants with respect to the Plan who are not Beneficiaries or an alternate payee under a Qualified Domestic Relations Order (QDRO), provided that the borrower must qualify as a "party in interest" as defined by ERISA Section 3(14), but not Participants whose employment has terminated. All current employees of the Employer and certain former Employees qualify as parties in interest.

The Plan Administrator is authorized to administer the Participant loan policy. A Participant must apply to the Plan Administrator for a loan in the manner set forth by the Plan Administrator.

1. LOAN APPLICATION/BORROWER QUALIFICATION. Any Participant may apply for a loan from the Plan.

All loan applications will be considered by the Plan Administrator within a reasonable time after the Participant makes formal application in accordance with elections made by the Plan Sponsor in the Administrative Services Agreement between the Plan Sponsor and the service provider ("Prudential") as follows:

If the Loan Initiation Outsourcing Service has been selected, a Participant may apply for a loan by submitting a loan application ("Application"), in a form prescribed by Prudential and consistent with the terms of this Loan Policy as authorized by the Plan Administrator, to Prudential by authorized electronic means. The date and time of receipt will be appropriately recorded.

If the Participant Transaction Center (PTC) Loan Service has been selected, a Participant may apply for a loan by submitting a loan application ("Application"), in a form prescribed by Prudential and consistent with the terms of this Loan Policy as authorized by the Plan Administrator, to Prudential by authorized electronic means. The request will be reviewed and approved and/or denied by an authorized representative of the Employer by electronic means. The date and time of receipt will be appropriately recorded.

If the Non-Automated Loan Service has been selected, a Participant may apply for a loan by submitting a duly completed loan application ("Application") to the Plan Administrator or authorized plan representative that has been signed by the Participant, within the 90-day period prior to the making of the loan. If spousal consent is required, the application must be signed by the spouse and witnessed by a notary public or an authorized plan representative. An authorized plan representative must approve the loan.

The Plan Administrator will not investigate the Participant's creditworthiness before making the loan as the loan will be treated as a directed investment of the borrower's Account.

An Employee may not make and the Plan will not accept a Direct Rollover of a loan note from the qualified plan of a Participant's former employer.

Please refer to the Administrative Services Agreement for applicable loan initiation and maintenance fees. The Plan Administrator, as to new loans, may increase these fees by notice to or agreement with the record keeper or other party administering loans and repayments.

2. LOAN LIMITATIONS. The Plan Administrator will not approve any loan to a Participant in an amount which exceeds 50% of his or her nonforfeitable account balance. The maximum aggregate dollar amount of loans outstanding to any Participant may not exceed \$50,000, reduced by the excess of the Participant's highest outstanding Participant loan balance during the 12-month period ending on the date of the loan over the Participant's current outstanding Participant loan balance on the date of the loan. With regard to any loan made pursuant to this program, the following rule(s) and limitation(s) will apply, in addition to such other requirements set forth in the Plan:

- No loan in an amount less than \$1,000 will be granted to any Participant.
- A Participant can only have 2 loan(s) currently outstanding from the Plan. One of which may be for any general purpose and one for purchase of a primary residence.
- A new loan may not be issued until ten days after a previous loan has been satisfied.
- Loan refinancing is not permitted.
- Loans will be permitted for any general purpose.
- Loans will be permitted for the purchase of a primary residence.
- Loans will be made from the following accounts in the following order:

- (a) Pro-rata from all accounts.

3. **EVIDENCE AND TERMS OF LOAN.** The Plan Administrator will document every loan in the form of a promissory note signed by the Participant for the face amount of the loan, together with a commercially reasonable rate of interest.

The interest rate will be set by reference to the "bank prime rate." In accordance with the Plan Sponsor's direction, Prudential will make any necessary rate changes based upon the "bank prime rate" plus 1% reported by the U.S. Federal Reserve on the last business day of a calendar quarter effective for loans made on and after the first business day of the subsequent quarter. The source for the rate will be [www.federalreserve.gov](http://www.federalreserve.gov) or other websites that may provide the same information.

- i. The interest rate on Participant loans will be declared quarterly; however, the Plan reserves the right to change the basis for determining the interest rate prospectively with thirty (30) days notice.
- ii. These rights will only apply to a loan issued after the change(s) takes effect.

The loan must provide at least quarterly payments under a level amortization schedule. If the Participant is currently employed by the Employer, the Plan Administrator will require the Participant receiving a loan from the Plan to enter into a payroll deduction agreement to repay the loan.

The Plan Administrator will fix the term for repayment of any loan, however, in no instance may the term of repayment be greater than five years, unless the loan qualifies as a home loan. A "home loan" is a loan used to acquire a dwelling unit which, within a reasonable time, the Participant will use as a principal residence. The maximum term for a home loan will be 10 years.

All loans will be considered a directed investment from the account(s) of the Participant maintained under the Plan. As such, all payments of principal and interest made by the Participant will be credited only to the account(s) of such Participant.

The Plan will charge that portion of the Participant's account balances with expenses directly related to the loan set-up, annual maintenance, administrative charges, and collection of the note. See the Administrative Services Agreement for more details.

A Participant may not request a Direct Rollover of a loan note to another qualified plan.

After termination of employment, a Participant may continue repayments via coupon/direct billing. Whether the Participant chooses to continue to repay the loan or chooses not to repay the loan, the remaining loan balance will be offset against the participant's account upon the earlier of (1) a total distribution of the account to the Participant, or (2) expiration of the grace period.

Participants should note the law treats the amount of any loan (other than a "home loan") not repaid five years after the date of the loan as a taxable distribution on the last day of the five year period or, if sooner, at the time the loan is in default. If a Participant extends a non-home loan having a five year or less repayment term beyond five years, the balance of the loan at the time of the extension is a taxable distribution to the Participant.

Loans may be paid in full at any time without penalty. Participants may contact the record keeper in order to obtain a payoff quote that is valid for 14 business days.

Partial prepayments of principal only will not change the amount or timing of subsequent payments due prior to pay-off of the loan, but will simply reduce the total number of payments to be made. In order to be processed as a prepayment of principal only, the Participant or Plan Administrator must notify Prudential that the payment needs to be processed as a principal only payment, and the amount should be sent as a separate payment, not with payments made in accordance with the amortization schedule. Unless otherwise directed by the Participant or an authorized representative of the Employer as of the trade date of receipt, payments made as required by the loan amortization schedule will be allocated to principal and interest in accordance with the amortization schedule.

4. **SECURITY FOR LOAN.** The Plan will require that adequate security be provided by the Participant before a loan is granted. For this purpose, the Plan will consider a Participant's interest under the Plan (account balance) to be adequate security. However, in no event will more than 50% of a Participant's vested interest in the Plan (determined immediately after origination of the loan) be used as security for the loan. Generally, it will be the policy of the Plan not to make loans which require security other than the Participant's vested interest in the Plan. However, if additional security is necessary to adequately secure the loan, then the Plan Administrator will require that such security be provided before the loan will be granted.

5. **SPOUSAL CONSENT.** The Participant is not required to obtain his/her spouse's consent to use the account balance as security for the loan regardless of the value of the Participant's account balance.

## Participant Loan Policy

6. **FORM OF PLEDGE.** The pledge and assignment of a Participant's account balances will be in the form prescribed by the Plan Administrator.
7. **MILITARY SERVICE.** If a Participant separates from service (or takes a leave of absence) from the Employer because of service in the military and does not receive a distribution of his or her account balances, the Plan will suspend loan repayments until the Participant's completion of military service. The Employer will provide the Participant with a written explanation of the effect of the Participant's military service upon his or her Plan loan. While the Participant is on active duty in the United States military, the interest rate on the loan will not exceed six percent (6%), compounded annually.
8. **LEAVE OF ABSENCE/SUSPENSION OF PAYMENT.** The Plan Administrator will suspend loan repayments for a period not exceeding one year which occurs during an approved leave of absence, either without pay from the Employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. The Plan Administrator will provide the Participant with a written explanation of the effect of the leave of absence upon his or her Plan loan.
9. **PAYMENTS AFTER LEAVE OF ABSENCE.** When payments resume following a payment suspension in connection with a leave of absence authorized above, the Participant will select one of the following methods to repay the loan, plus accumulated interest:
- The Participant will increase the amount of the required installments to an amount sufficient to amortize the remaining balance of the loan, plus accrued interest, over the remaining term of the loan.
  - The Participant may extend the maturity of the loan and re-amortize the payments over the remaining term of the loan. In no event will the amount of the adjusted installment payment be less than the amount of the installment payment provided under the promissory note. In the case of a non-military leave of absence, the revised term of the loan will not exceed the maximum term permitted under item 3 above. In the case of a military leave of absence, the revised term of the loan will not exceed the maximum term permitted under item 3 above, augmented by the time the Participant was actually in United States military service.
10. **DEFAULT.** The Plan Administrator will treat a loan as in default if:
- any scheduled payment remains unpaid beyond 90 days after each due date (but the grace period may extend the default date to the end of the calendar quarter following the calendar quarter in which the Participant missed the scheduled payment).
- The Participant may pay any missed loan payments before any applicable grace period expires for the specific loan payment not paid on time, or repay the loan in full, or, if distribution is available under the Plan, request distribution of the note. If none of these options are exercised, the Plan Administrator will offset the loan to the vested account balances by the outstanding balance of the loan to the extent permitted by law. The Plan Administrator will treat the note as repaid to the extent of any permissible offset. Pending final disposition of the note, the Participant remains obligated for any unpaid principal and accrued interest.
- If the Participant is currently in default on a loan from this Plan, the Participant may not have an additional loan from this Plan unless the defaulted loan is either paid in full or offset prior to the new loan initiation.
11. **FEES.** If you apply for a loan, you will be charged for Plan expenses associated with the loan. All fees are subject to change.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. This loan policy may be amended from time to time.

\_\_\_\_\_  
Signature of Plan Administrator  
City of El Paso 457(b) Deferred Compensation Plan for Public Employees

**PRUDENTIAL RETIREMENT  
SPECIMEN GOVERNMENTAL 457(b) PLAN**

**This Plan Document is to be used in conjunction with the  
Prudential Retirement  
Specimen Governmental 457(b) Adoption Agreement**

**This Plan Document is not to be used for  
a tax exempt organization 457(b) plan.**

**This document has not been amended to reflect specific provisions of applicable  
state law. Each adopting entity should review its local and state law requirements  
before either adopting this Prudential Retirement Specimen Governmental 457(b)  
Plan or  
executing its Adoption Agreement.**

*Prudential and its affiliates do not provide tax or legal advice. This specimen document  
is for the use of the Employer's tax or legal advisors.*

*Revised: February 2017*

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## **Article I Introduction**

The Employer hereby establishes the Plan for the primary purpose of providing retirement income and other deferred benefits to its Employees and their Beneficiaries in accordance with the provisions of Code section 457. This Plan document is effective as of the Effective Date.

The Plan consists of the provisions set forth in this Plan document and its related Adoption Agreement. The Plan is intended to be a Code section 457(b) plan for employees of governmental entities described in Code section 457(e)(1)(A).

The assets of the Plan shall be held in a Trust that complies with the requirements of Code section 457(g). The Plan and its related Trust shall be maintained for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

## **Article II Definitions**

For purposes of the Plan and the Adoption Agreement, the following terms shall have the meanings set forth below.

### **Section 2.1 Account**

The bookkeeping account maintained for each Participant that reflects the cumulative amount of the Participant's Deferred Compensation. Each Participant's Account shall be adjusted to reflect any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and shall also be adjusted to reflect any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.

### **Section 2.2 Adoption Agreement**

The document executed by the Employer and, if applicable, the Trustee and countersigned by Prudential by which the Employer adopts this Plan and wherein the Employer selects from the options contained therein certain provisions relating to the operation of the Plan. The Adoption Agreement shall be incorporated into and form an integral part of the Plan.

### **Section 2.3 Automatic Distribution Date**

"Automatic Distribution Date" means April 1 of the calendar year after the Plan Year of the Participant's Severance Event or any other date permitted under Code section 457(d) and any Treasury Regulations promulgated thereunder as set forth in the Adoption Agreement.

### **Section 2.4 Beneficiary**

The person or persons designated by the Participant who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares (per capita) of the benefits payable at the Participant's death, unless otherwise provided by the Participant. If no beneficiary is designated, or if the designated Beneficiary predeceases the Participant, then the estate of the Participant shall be the Beneficiary unless otherwise selected in the Adoption Agreement.

## **Section 2.5 Catch-Up Dollar Limitation**

“Catch-Up Dollar Limitation” means twice the Dollar Limitation.

## **Section 2.6 Code**

The Internal Revenue Code of 1986, as it may be amended from time to time, or any successor thereto.

## **Section 2.7 Deferred Compensation**

The amount of Includible Compensation otherwise payable to the Participant which the Participant and the Employer mutually agree to defer hereunder, any amount credited to a Participant’s Account by reason of a transfer under Section 6.1, a rollover under Section 6.2, any contribution of accumulated sick pay, accumulated vacation pay, or accumulated back pay permitted under the Adoption Agreement, or any other amount which the Employer agrees to credit to a Participant’s Account.

## **Section 2.8 Dollar Limitation**

The applicable dollar amount within the meaning of Code sections 457(b)(2)(A) and 457(e)(15)(A), as adjusted for the cost-of-living in accordance with Code section 457(e)(15)(B).

## **Section 2.9 Effective Date**

The Effective Date of this Plan document is the date set forth in the Adoption Agreement.

## **Section 2.10 Employee**

Any individual who provides services for the Employer, whether as an employee of the Employer or as an independent contractor.

Notwithstanding any provision of the Plan to the contrary and except as may be provided with respect to independent contractors described in the Adoption Agreement, it is expressly intended that the term “Employee” as of any date shall not include any person who is not so recorded as such on the payroll records of the Employer as of such date, including any such person who is retroactively reclassified by a court of law, administrative agency, or regulatory body as a common law employee of the Employer. For purposes of clarification only and not to imply that the first sentence of this definition

would otherwise cover such person, the term “Employee” does not include any individual who performs services for the Employer as a leased employee or under any other non-employee classification.

### **Section 2.11 Employer**

The Employer set forth in the Adoption Agreement. The Employer is a political subdivision, agency or instrumentality of a state, within the meaning of Code section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended.

### **Section 2.12 Enrollment Agreement**

An agreement or agreements entered into between an Employee and the Employer, including any amendments or modifications thereof, for the purpose of allowing an Employee to become a Participant in the Plan.

### **Section 2.13 Entry Date**

The Entry Date set forth in the Adoption Agreement.

### **Section 2.14 Includible Compensation**

The definition of Includible Compensation set forth in the Adoption Agreement.

### **Section 2.15 Minimum Deferral Amount**

The minimum amount of Deferred Compensation that an Employee must defer into the Plan as set forth in the Adoption Agreement. The Minimum Deferral Amount may be expressed as a fixed number and/or a percentage of Normal or Includible Compensation.

### **Section 2.16 Maximum Deferral Amount**

The maximum amount of Deferred Compensation that an Employee may defer into the Plan as set forth in the Adoption Agreement. The Maximum Deferral Amount may be expressed as a fixed number and/or a percentage of Includible Compensation.

### **Section 2.17 Normal Limitation**

The maximum amount of Deferred Compensation for any Participant for any taxable year (other than amounts referred to in Sections 6.1 and 6.2).

### **Section 2.18 Normal Retirement Age**

The age set forth in the Adoption Agreement, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Plan Administrator prior to a Severance Event. A Participant's Normal Retirement Age determines the period during which a Participant may utilize the catch-up limitation of Section 4.2(b) hereunder. Once a Participant has to any extent utilized the catch-up limitation of Section 4.2(b), his or her Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earlier of age 65 or the age at which the Participant will become eligible to retire and receive, under the Employer's basic defined benefit pension plan (or the Employer's money purchase pension plan in which the Participant also participates if the Participant is not eligible to participate in the Employer's basic defined benefit pension plan), immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age and that is not later than age 70-1/2. An Employer may not permit a Participant to have more than one Normal Retirement Age under the eligible plans it sponsors.

To the extent that qualified police or firefighters (as defined under Code section 415(b)(2)(H)(ii)(I)) participate in the Plan, the Plan may specify or permit Participants to specify an earlier Normal Retirement Age than otherwise permitted under the Plan, but in no event may this Normal Retirement Age be earlier than age 40.

Notwithstanding any provision of the Plan to the contrary, Normal Retirement Age may not be earlier than the earliest age or later than the latest age permitted under Code section 457(b) and, effective January 1, 2002, Treasury Regulation section 1.457-4(c)(3)(v).

### **Section 2.19 Participant**

Any Employee who has joined the Plan pursuant to the requirements of Article III.

## **Section 2.20 Percentage Limitation**

The Percentage Limitation means 100 percent of the Participant's Includible Compensation for the taxable year.

## **Section 2.21 Plan**

This plan document and the Adoption Agreement. The name of the Plan shall be the name set forth in the Adoption Agreement.

## **Section 2.22 Plan Administrator**

The person or persons named in the Adoption Agreement who are responsible for the administration of the Plan and the investment of and accounting for the Plan's assets. If such person or persons are not so named or cease to serve as Plan Administrator without the Employer having a successor or successors, the Employer shall be the Plan Administrator.

## **Section 2.23 Plan Year**

The twelve-month period set forth in the Adoption Agreement.

## **Section 2.24 Prudential**

Prudential Retirement, a business division of The Prudential Insurance Company of America. In any provision of the Plan providing for the insulation of Prudential from liability, the term Prudential shall also include Prudential Financial and all affiliates thereof.

## **Section 2.25 Severance Event**

Severance Event means a severance of the Participant's employment with the Employer within the meaning of Code section 457(d)(1)(A)(ii) and any Treasury Regulations thereunder.

In the case of a Participant who is an independent contractor of the Employer, a Severance Event shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, that the Employer does not foresee the possibility that it will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will become an

Employee of the Employer, or such other events as may be permitted under the Code and any Treasury Regulations promulgated thereunder.

### **Section 2.26 Treasury Regulation**

The temporary and final regulations published by the Department of the Treasury under the Code.

### **Section 2.27 Trust**

The Plan's assets must be held in:

- (a) A trust described in Code section 457(g)(1) that is established under the applicable laws of the State set forth in the Adoption Agreement;
- (b) A trust described in Code section 457(g)(1) that is established with Prudential Trust Company or its successor as the Trustee of the Trust;
- (c) A trust described in Code section 457(g)(1) that is established with Prudential Bank & Trust, FSB or its successor as the Trustee of the Trust; and/or
- (d) A custodial account or annuity contract described in Code section 457(g)(3).

The term "Trust" shall mean and include any trust created pursuant to the Trust Agreement, and any custodial account or annuity contract which holds assets of the Plan.

### **Section 2.28 Trust Agreement**

The agreement between the Employer and the Trustee setting forth the terms and conditions of the Trust and the relative powers of the Employer, the Trustee, and any other party with respect to the Trust, if applicable. If assets are held in a custodial account or annuity contract, the term "Trust Agreement" shall also mean the custodial account agreement or annuity contract.

### **Section 2.29 Trustee**

The Trustee selected in the Adoption Agreement, if applicable.



### **Section 2.30 Valuation Date**

Each business day that the New York Stock Exchange is open for regular (not “after-hours” or “extended hours”) trading. On a Valuation Date, the value of any investment or Account shall be based on the reported value of the investment or underlying investments in the relevant Account as of the close of trading (e.g., the last trade value) on the New York Stock Exchange on such Valuation Date.

## **Article III Participation in the Plan**

### **Section 3.1 Initial Participation**

An Employee may become a Participant by entering into an Enrollment Agreement prior to the beginning of the calendar month in which the Enrollment Agreement is to become effective to defer compensation not yet earned, or such other date as may be permitted under the Code. An Enrollment Agreement may be entered into effective as of any Entry Date.

### **Section 3.2 Amendment of Enrollment Agreement**

A Participant may amend an Enrollment Agreement to change the amount of Includible Compensation not yet earned which is to be deferred or to change his or her investment preference (subject to such restrictions as may result from the nature of terms of any investment made by the Employer). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed, or such other date as may be permitted under the Code.

### **Section 3.3 Special Rule for Accumulated Leave**

To the extent provided in the Adoption Agreement, a Participant may enter into a separate Enrollment Agreement with respect to his or her accumulated sick, vacation, or back pay if such election is made consistent with the requirements set forth in Treasury Regulation section 1.457-4(d) and other applicable guidance. If a separate Enrollment Agreement is not completed, no amounts will be deferred with respect to such pay.

### **Section 3.4 Content of Enrollment Agreement**

An Enrollment Agreement shall fix the amount of Deferred Compensation and shall specify a preference among the investment alternatives designated by the Employer. In no event shall the amount of Deferred Compensation under an Enrollment Agreement be less than the Minimum Deferral Amount or more than the Maximum Deferral Amount.

### **Section 3.5 Automatic Enrollment**

(a) **Automatic Deferrals.** If the Adoption Agreement provides for automatic enrollment, individuals automatically enrolled in the Plan shall be deemed to have entered into an Enrollment Agreement with the elections as set forth in the Adoption

Agreement. The Plan Administrator will treat automatic deferrals as elective deferrals for all purposes under the Plan, including application of limitations and distributions. If the Employer in its Adoption Agreement has elected to permit Roth elective deferrals, automatic deferrals are pre-tax deferrals unless elected otherwise. Notwithstanding the foregoing, the Plan shall only implement automatic enrollment in a manner consistent with Code section 457(b) and applicable guidance thereunder.

(b) **Automatic Contribution Arrangement.** To the extent that the Adoption Agreement provides that the Plan contains an automatic contribution arrangement (“ACA”), the provisions of this Section 3.5(b) apply.

(1) **Participants Subject To ACA.** The Participants subject to the ACA are as set forth in the Adoption Agreement.

(2) **Effect of Contrary Election.** A Participant who makes a Contrary Election is not subject to automatic deferral or to any scheduled increases thereto. A Participant’s Contrary Election continues in effect until the Participant subsequently changes his or her Enrollment Agreement or the Contrary Election expires or is revoked. After the revocation or expiration of a Contrary Election, a Participant is subject to automatic deferral and/or to any scheduled increases under the provisions elected in the Adoption Agreement.

(c) **Eligible Automatic Contribution Arrangement.** To the extent that the Adoption Agreement provides that the Plan contains an eligible automatic contribution arrangement (“EACA”), the provisions of this Section 3.5(c) apply.

(1) **Participants Subject To EACA.** The Participants subject to the EACA are as set forth in the Adoption Agreement.

(2) **Uniformity.** The Automatic Deferral Percentage must be a uniform percentage of Includible Compensation within the limits as set forth in the Code and any applicable guidance.

(3) **EACA Notice.** The Plan Administrator will ensure that any notice of the EACA is provided as required by Code section 414(w) and applicable guidance.

(4) **EACA Permissible Withdrawal.** To the extent provided in the Adoption Agreement, a Participant who has automatic deferrals under the EACA may elect to withdraw all the automatic deferrals (and allocable earnings) under the provisions of this Section 3.5(c)(4). The following rules will apply to an EACA Permissible Withdrawal:

(a) If a Participant elects a permissible withdrawal under this Section 3.5(c)(4), then the Plan must make a distribution equal to the amount (and only the amount) of the automatic deferrals made under the EACA (adjusted for earnings to the date of the distribution).

(b) Notwithstanding Section 3.5(c)(4)(a), the Plan Administrator may reduce the permissible distribution amount by any generally applicable fees. However, the Plan may not charge a greater fee for distribution under this Section 3.5(c)(4)(b), than applies to other distributions. The Plan Administrator may adopt a policy regarding charging such fees consistent with this paragraph.

(c) The Participant may make an election to withdraw the automatic deferrals under the EACA no later than 90 days, or such shorter period as the Employer specifies in its Adoption Agreement (but not less than 30 days), after the date of the first automatic deferral under the EACA. For this purpose, the date of the first automatic deferral is the date that the Includible Compensation subject to the automatic deferral otherwise would have been includible in the Participant's gross income. In addition, a Participant's withdrawal right is not restricted due to the Participant making a Contrary Election during the 90-day period (or shorter period as the Employer specifies in its Adoption Agreement).

(d) For purposes of Section 3.5(c)(4)(c), the Plan will treat an Employee who for an entire Plan Year did not have contributions made pursuant to a default election under the EACA as having not had such contributions for any prior Plan Year as well.

(e) The effective date of a permissible withdrawal will be as soon as practicable, but in no event later than the earlier of: (1) the pay date of the second payroll period beginning after the Participant makes the election; or (2) the first pay date that occurs at least 30 days after the Participant makes the election. The election also will be deemed to be the Participant's Contrary Election to have no elective deferrals made to the Plan. However, the Participant may subsequently make a deferral election under the terms of the Plan.

(5) **Effect of Contrary Election.** A Participant who makes a Contrary Election is not subject to automatic deferral or to any scheduled increases thereto. A Participant's Contrary Election continues in effect until the Participant subsequently changes his or her Enrollment Agreement or the Contrary Election expires or is revoked, and upon revocation or expiration of a Contrary Election the Participant is thereafter subject to automatic deferral or to any scheduled increases thereto.

(d) **Automatic Contribution Definitions.** The following definitions apply to all Automatic Contribution Arrangements under this Section 3.5:

(1) **“ACA Effective Date” or “EACA Effective Date”** means the date on which the ACA or EACA, as applicable, goes into effect, either as to the overall Plan or as to an individual Participant as the context requires as set forth in the Adoption Agreement. A Participant’s ACA Effective Date or EACA Effective Date is as soon as practicable after the Participant is subject to automatic deferrals under the ACA or EACA, consistent with the objective of affording the Participant a reasonable period of time after receipt of the ACA or EACA notice to make a Contrary Election (and, if applicable, an investment election).

(2) **Automatic Deferral.** An automatic deferral is an elective deferral that results from the operation of Section 3.5(b) or Section 3.5(c). Under the automatic deferral, the Employer automatically will reduce by the Automatic Deferral Percentage or Amount the Includible Compensation of each Participant subject to the automatic deferral, except those Participants who timely make a Contrary Election.

(3) **Automatic Deferral Percentage/Increases.** The Automatic Deferral Percentage is the percentage of automatic deferral specified in the Adoption Agreement including any scheduled increase to the Automatic Deferral Percentage which the Employer may elect. If a Participant subject to the automatic deferral elected, before the Effective Date of the automatic deferral, to defer an amount which is less than the Automatic Deferral Percentage set forth in the Adoption Agreement, the Automatic Deferral Percentage includes only the incremental percentage amount necessary to increase the Participant’s Elective Deferral to equal the Automatic Deferral Percentage, including any scheduled increases thereto.

(4) **Contrary Election.** A Contrary Election is a Participant’s election made after the ACA Effective Date or EACA Effective Date, as applicable, not to defer any Includible Compensation or to defer an amount which is more or less than the Automatic Deferral Percentage (including a Participant’s election made before such effective date under the Plan’s prior automatic deferral arrangement, if applicable).

(5) **Contrary Election Effective Date.** A Participant’s Contrary Election generally is effective as of the first payroll period which follows the payroll period in which the Participant makes the Contrary Election. However, a Participant may make a Contrary Election which is effective: (a) for the first payroll period in which he or she becomes a Participant if the Participant makes a Contrary Election within a reasonable period following the Participant’s Entry Date and before the Includible

Compensation to which the Election applies becomes currently available; or (b) for the first payroll period following the Participant's ACA Effective Date or EACA Effective Date, as applicable, if the Participant makes a Contrary Election not later than the Participant's ACA Effective Date or EACA Effective Date.

### **Section 3.6 Automatic Escalation**

To the extent set forth in the Adoption Agreement, automatic escalation will apply.

## **Article IV Limitations on Deferrals**

### **Section 4.1 Normal Limitation**

Except as provided in Section 4.2, the maximum amount of Deferred Compensation for any Participant for any taxable year, shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation.

### **Section 4.2 Catch-Up Limitation**

(a) **Catch-up Contributions for Participants Age 50 and Over.** If permitted by the Adoption Agreement, a Participant who will attain the age of 50 before the close of the taxable year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of Section 4.1, may enter into an Enrollment Agreement to make elective deferrals in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of (1) the applicable dollar amount as defined in Code section 414(v)(2)(B), as adjusted for the cost-of-living in accordance with Code section 414(v)(2)(C), or (2) the excess (if any) of (i) the Participant's compensation (as defined in Code section 415(c)(3)) for the year, over (ii) any other elective deferrals of the Participant for such year which are made without regard to this Section 4.2(a). An additional contribution made pursuant to this Section 4.2(a) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Code section 457(e)(15), or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. Notwithstanding the foregoing, for purposes of applying the limitations set forth in Code section 414(v)(2), all plans maintained by the Employer that are described in Code section 414(v)(6)(A)(iii) shall be treated as a single plan. This Section 4.2(a) shall not apply in any taxable year in which the contribution amount permitted by Section 4.2(b) exceeds the contribution amount permitted by this Section 4.2(a).

(b) **Last Three Years Catch-up Contribution.** For each of the last three (3) taxable years for a Participant ending before his or her attainment of Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of: (1) the Catch-up Dollar Limitation, or (2) the sum of (i) the Normal Limitation for the taxable year, and (ii) the Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Deferred Compensation for such prior taxable years. With respect to taxable years beginning on or before December 31, 2001, each such taxable year's Normal Limitation described in subsection (ii) of the preceding sentence shall be reduced pursuant to the provisions of Code section 457(c) applicable to such taxable year. A prior taxable year shall be taken into account under

the preceding sentence only if the Participant was eligible to participate in the Plan for such year (or in any other eligible deferred compensation plan established under Code section 457(b) which is properly taken into account pursuant to Treasury Regulations under Code section 457), and compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation. This Section 4.2(b) shall not apply in any taxable year in which the contribution amount permitted by Section 4.2(a) exceeds the contribution amount permitted by this Section 4.2(b).

**(c) No Deferrals in Excess of Includible Compensation Limit.**

Notwithstanding the above, in no event can the deferred amount be more than the Participant's Includible Compensation for the calendar year.

**Section 4.3 Additional Employer Contributions**

Notwithstanding any provision of the Plan to the contrary, if elected in the Adoption Agreement, the Employer may contribute additional amounts to a Participant's Account in accordance with the contribution options selected in the Adoption Agreement. Such additional contributions shall be treated as additional Deferred Compensation of the Participants whose Accounts receive such contributions and shall be subject to the limitations set forth in this Article IV.

**Section 4.4 Other Plans**

Notwithstanding any provision of the Plan to the contrary, the amount excludible from a Participant's gross income under this Plan or any other eligible deferred compensation plan under Code section 457(b) shall not exceed the limits set forth in Code sections 457(b) and 414(v).

**Section 4.5 Correction of Excess Deferrals**

Notwithstanding any provision of the Plan to the contrary, the Plan shall distribute any Deferred Compensation in excess of the limits described in this Article IV in a manner consistent with Code section 457(b) and any Treasury Regulations or other authority promulgated thereunder.



## Article V Benefits

### Section 5.1 Retirement Benefits and Election on Severance Event

(a) **Post-Severance Event Distribution.** Except as otherwise provided in this Article V, the distribution of a Participant's Account shall commence as of a Participant's Automatic Distribution Date, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 5.2. Notwithstanding the foregoing, but subject to the following paragraphs of this Section 5.1, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date other than that described in the preceding sentence, but not later than April 1 of the year following the year of the Participant's Severance Event or attainment of age 70½, whichever is later.

Notwithstanding the foregoing, the Plan Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.

(b) **In-Service Distributions After Age 70½.** If permitted by the Adoption Agreement, a Participant may elect to receive in-service distributions from his or her Account on or after the calendar year in which the Participant attains age 70½ to the extent permitted by the Code and any Treasury Regulations promulgated thereunder.

(c) **Loans.** Notwithstanding the foregoing provisions of this Section 5.1, no election to defer the commencement of benefits after a Severance Event shall operate to defer the distribution of any amount required to be distributed from a Participant's Account pursuant to the Plan Administrator's procedures in the event of a default of the Participant's loan.

### Section 5.2 Payment Options

As provided in Sections 5.1, 5.4 and 5.5, a Participant or Beneficiary may elect to have the value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 5.3 and is permitted under the terms of the Adoption Agreement.

(a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;

(b) One lump-sum payment;

(c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant or Beneficiary as permitted under the Adoption Agreement.

(d) Annual Payments equal to the life-expectancy based minimum distributions required under Code section 401(a)(9), including the incidental death benefit requirements of Code section 401(a)(9)(G).

(e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer, provided that such payments shall comply with the requirements of Code section 401(a)(9), including the incidental death benefit requirements of Code section 401(a)(9)(G).

(f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 5.1, provided that all payments commence (or are made) by the latest benefit commencement date under Section 5.1.

(g) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at different times, as elected by the Participant or Beneficiary, as applicable, provided that all payments commence (or are made) by the latest benefit commencement date required under the Plan.

(h) Subject to Section 5.3, any payment option elected by the Participant or Beneficiary, as applicable, and agreed to by the Employer, the Plan Administrator and Prudential.

If a Participant or Beneficiary fails to make a timely election of a payment option, benefits shall be paid under the default option set forth in the Adoption Agreement.

### **Section 5.3 Limitation on Options**

No payment option may be selected by a Participant or Beneficiary under Sections 5.2, 5.4, or 5.5 unless it satisfies the requirements of Code sections 401(a)(9) and 457(d)(2) of the Code and applicable Treasury Regulations thereunder, including that payments commencing before the death of the Participant shall satisfy the incidental death benefit requirements under Code section 401(a)(9)(G).

## **Section 5.4 Post-Retirement Death Benefits**

(a) Should the Participant die after he or she has begun to receive benefits, payments shall be made to the Participant's Beneficiary pursuant to the terms of the Adoption Agreement. Any different payment option elected by a Beneficiary under this Section 5.4 and the related provisions of the Adoption Agreement must provide for payments at a rate that is at least as rapid under the payment option that was applicable to the Participant. In no event shall the Employer or Plan Administrator be liable to the Beneficiary for the amount of any payment made in the name of the Participant before the Plan Administrator receives proof of death of the Participant. In the event that the Participant's estate is the Beneficiary, the commuted value of any remaining payments under the payment option shall be paid to the estate in a lump sum.

(b) To the extent provided in the Adoption Agreement, the Beneficiary may designate a beneficiary to receive the value of the Participant's account, if any, remaining at the Beneficiary's death. If the Beneficiary does not continue to live for the remaining period of payments under the payment option, and the Beneficiary has designated a beneficiary that complies with the Plan terms and the Participant's Beneficiary designation, then the commuted value of any remaining payments under the payment option shall be paid in a lump sum to the beneficiary designated by the Beneficiary. A Beneficiary may only designate a beneficiary for the value of the Participant's Account remaining at the Beneficiary's death if the Participant has not previously designated a successive contingent beneficiary and the Beneficiary's designation otherwise complies with the Plan terms. If the Beneficiary does not continue to live for the remaining period of payments under the payment option, and the Plan does not permit the Beneficiary to designate a beneficiary, or the Beneficiary fails to designate a beneficiary, or the beneficiary whom the Beneficiary designates predeceases the Beneficiary, then the commuted value of any remaining payments under the payment option shall be paid in a lump sum to the estate of the Beneficiary.

## **Section 5.5 Pre-Retirement Death Benefits**

(a) Should the Participant die before he or she has begun to receive the benefits provided by Section 5.1, the value of the Participant's Account shall be payable to the Beneficiary pursuant to the terms of the Adoption Agreement. The benefit commencement date under this Section 5.5 shall not be later than the later of (i) December 31 of the year following the year of the Participant's death, (ii) for non-installment distributions, the December 31 of the fifth year following the year of the Participant's death or (iii) if the Beneficiary is the Participant's spouse, December 31 of the year in which the Participant would have attained age 70½.

(b) Unless a Beneficiary elects a different payment option prior to the benefit commencement date, death benefits under this Section shall be paid in the default method of distribution set forth in the Adoption Agreement. A Beneficiary may elect from the methods of distribution available to the Beneficiary pursuant to the terms of the Adoption Agreement, provided, however, that a method of distribution must satisfy the requirements of Code sections 401(a)(9) and 457(d)(2) of the Code and applicable Treasury Regulations thereunder. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

(c) To the extent provided in the Adoption Agreement, the Beneficiary may designate a beneficiary to receive the value of the Participant's Account, if any, remaining at the Beneficiary's death. If the Beneficiary survives the Participant but dies before the payment of death benefits has commenced or been completed, and the Beneficiary has designated a beneficiary that complies with the Plan terms and the Participant's Beneficiary designation, the remaining value of the Participant's Account shall be paid in a lump sum to the beneficiary designated by the Beneficiary. A Beneficiary may only designate a beneficiary for the value of the Participant's Account remaining at the Beneficiary's death if the Participant has not previously designated a successive contingent beneficiary and the Beneficiary's designation otherwise complies with the Plan terms. If the Beneficiary survives the Participant but dies before the payment of death benefits has commenced or been completed, and the Plan does not permit the Beneficiary to designate a beneficiary, or the Beneficiary fails to designate a beneficiary, or the beneficiary whom the Beneficiary designates predeceases the Beneficiary, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum.

### **Section 5.6 Unforeseeable Emergencies**

(a) To the extent provided in the Adoption Agreement, in the event an unforeseeable emergency occurs, a Participant or Beneficiary (if the Participant is deceased) may apply to the Employer to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Employer, the Participant or Beneficiary shall be paid only such amount as the Employer deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.

(b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship to the Participant or a Beneficiary resulting from a sudden unexpected illness or accident of the Participant or Beneficiary, his or her

spouse, or a dependent (as defined in Code section 152, and, for taxable years beginning on or after January 1, 2005, without regard to Code sections 152(b)(1), (b)(2), and (d)(1)(B)) of the Participant or Beneficiary, loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster), or other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. Imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence, the need to pay for medical expenses (including non-refundable deductibles and the cost of prescription drug medication), and the need to pay for the funeral expenses of a spouse or a dependent (as defined in Code section 152, and, for taxable years beginning on or after January 1, 2005, without regard to Code sections 152(b)(1), (b)(2), and (d)(1)(B)) may each constitute an unforeseeable emergency. However, the need to send a Participant's or Beneficiary's child to college or to purchase a new home shall not, of itself, be considered unforeseeable emergencies. The determination as to whether such an unforeseeable emergency exists shall be based on the merits of each individual case.

### **Section 5.7 Voluntary and Involuntary Distribution of De Minimis Accounts**

Notwithstanding the foregoing provisions of this Article, if:

- (a) The portion of the value of a Participant's Account, calculated as set forth in the Adoption Agreement, does not exceed the dollar limit under Code section 411(a)(11)(A) (or such lesser amount set forth in the Adoption Agreement);
- (b) No amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution; and
- (c) There has been no prior distribution under the Plan to the Participant pursuant to this Section 5.7,

the Participant may elect to receive or the Plan Administrator may involuntarily distribute the Participant's entire Account to the extent permitted by the Adoption Agreement. Such distribution shall be made in a lump sum.

### **Section 5.8 HEART Act Distributions**

Effective as of the date set forth in the Adoption Agreement, a distribution may be made in accordance with the Heroes Earnings Assistance and Relief Tax Act of 2008, Code section 414(u)(12)(B), Notice 2010-15, and any other applicable guidance.

## **Section 5.9 Mandatory Rollovers**

Effective as of the date set forth in the Adoption Agreement, in the event of an involuntary distribution to a Participant greater than \$1,000 in accordance with the Section 5.2 or Section 5.7 and subject to the mandatory rollover rules in Code section 401(a)(31), if the Participant does not elect to have such distribution paid directly to an “eligible retirement plan” (as defined in Section 6.1(d)(2)) specified by the participant in a “direct rollover” (as defined in Section 6.1(d)(4)) or to receive the distribution directly in accordance with the provisions of the Plan and Adoption Agreement, then the Plan Administrator will pay the distribution in a “direct rollover” (as defined in Section 6.1(d)(4)) to an individual retirement plan designated by the Plan Administrator. For purposes of this Section 5.9, a Participant’s Roth elective deferrals and/or Roth rollover contributions, as separately accounted for under Section 14.2, shall be treated as held under a separate plan from a Participant’s other contributions to the extent required by the Code and applicable Treasury Regulations.

## **Section 5.10 Pre-Tax Payment of Health Care Expenses of Eligible Retired Public Safety Officers**

Effective as of the date set forth in the Adoption Agreement, a Participant who is an “eligible retired public safety officer” (as defined in Code section 402(l)(4)(B)) may elect to pay up to \$3,000 in “qualified health insurance premiums” (as defined in Code section 402(l)(4)(D)) for the Participant, his or her spouse, or his or her dependents. This provision shall be interpreted consistent with Code sections 402(l) and 457(a)(3), applicable Treasury Regulations thereunder, and IRS Notice 2007-7 and other applicable guidance.

## **Section 5.11 2009 RMD Suspension**

(a) Notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in a manner consistent with Code section 401(a)(9)(H), Notice IRS 2009-82 and any other applicable guidance.

(b) Participants and Beneficiaries who have a required beginning date under Code section 401(a)(9) prior to April 1, 2010 shall continue receiving required minimum distributions as required by Code section 401(a)(9) prior to amendment by Code section 401(a)(9)(H) unless they affirmatively elect to suspend such distributions for the 2009 calendar year in a manner consistent with procedures established by the Plan Administrator.

(c) Participants and Beneficiaries who have a required beginning date under Code section 401(a)(9) of April 1, 2010 shall not receive a required minimum distributions for the 2009 calendar year as required by Code section 401(a)(9) prior to amendment by Code section 401(a)(9)(H) unless they affirmatively elect to begin such distributions in a manner consistent with procedures established by the Plan Administrator.

## **Article VI Transfers, Rollovers and Permissive Service Credit**

### **Section 6.1 Transfers**

(a) **Incoming Transfers.** Subject to the requirements of Code section 457(e)(10), any Treasury Regulations thereunder, and the procedures established by the Plan Administrator, a transfer may be accepted from a governmental eligible deferred compensation plan if such transfer complies with the requirements set forth in subsection (1), (2) or (3) below:

#### **(1) In the Case of Plan-to-Plan Transfers of the Account of a Participant After a Severance Event.**

(a) The transferor governmental eligible deferred compensation plan must provide for transfers;

(b) The Participant or Beneficiary whose amounts deferred are being transferred must have deferred compensation immediately after the transfer at least equal to the amount deferred with respect to the Participant or Beneficiary immediately before the transfer;

(c) In the case of a transfer for a Participant, the Participant must have had a Severance Event with the transferring employer and must be performing services for the Employer.

#### **(2) In the Case of Plan-to-Plan Transfers of All Plan Assets to Another Code Section 457(b) Plan Within the Same State.**

(a) The transferor governmental eligible deferred compensation plan and the Plan must be within the same state;

(b) The transferor governmental eligible deferred compensation plan must provide for transfers;

(c) All assets of the transferor governmental plan must be transferred;

(d) The Participants and Beneficiaries whose amounts deferred are being transferred must have deferred compensation immediately after the transfer at



least equal to the amount deferred with respect to each Participant or Beneficiary immediately before the transfer;

(e) The Participants and Beneficiaries whose deferred amounts are being transferred must not be eligible to make additional annual deferrals under the Plan unless they are performing services for the Employer.

**(3) In the Case of Plan-to-Plan Transfers of Plan Assets Among an Employer's Code Section 457(b) Plans.**

(a) The transfer must be from another governmental eligible deferred compensation plan maintained by the same employer (and, for this purpose, the Employer is not treated as the same employer if the Participant's compensation is paid by a different entity);

(b) The transferor governmental eligible deferred compensation plan must provide for transfers;

(c) The Participant or Beneficiary whose amounts deferred are being transferred must have deferred compensation immediately after the transfer at least equal to the amount deferred with respect to the Participant or Beneficiary immediately before the transfer;

(d) The Participant or Beneficiary whose deferred amounts are being transferred must not be eligible to make additional annual deferrals under the Plan unless he or she is performing services for the Employer.

The Employer may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Code section 457(e)(10), to confirm that such plan is an eligible deferred compensation plan within the meaning of Code section 457(b), and to assure that transfers are provided for under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Plan Administrator agree to hold such other assets under the Plan.

Any such transferred amount shall not be treated as a deferral subject to the limitations of Article IV.

(b) **Outgoing Transfers.** Subject to the requirements of Code section 457(e)(10), and Treasury Regulations thereunder, and the procedures established by the Plan Administrator, an Account may be transferred to another eligible deferred

compensation plan if such transfer complies with the requirements set forth in subsection (1), (2) or (3) below:

**(1) In the Case of Plan-to-Plan Transfers of the Account of a Participant After a Severance Event.**

(a) The transferee governmental eligible deferred compensation plan must provide for transfers;

(b) The Participant or Beneficiary whose amounts deferred are being transferred must have deferred compensation immediately after the transfer at least equal to the amount deferred with respect to the Participant or Beneficiary immediately before the transfer;

(c) In the case of a transfer for a Participant, the Participant must have had a Severance Event with the Employer and must be performing services for the transferee employer.

**(2) In the Case of Plan-to-Plan Transfers of All Plan Assets to Another Code Section 457(b) Plan Within the Same State.**

(a) The transferee governmental eligible deferred compensation plan and the Plan must be within the same state;

(b) The transferee governmental eligible deferred compensation plan must provide for transfers;

(c) All assets of the Plan must be transferred;

(d) The Participants and Beneficiaries whose amounts deferred are being transferred must have deferred compensation immediately after the transfer at least equal to the amount deferred with respect to each Participant or Beneficiary immediately before the transfer;

(e) The Participants and Beneficiaries whose deferred amounts are being transferred must not be eligible to make additional annual deferrals under the transferee governmental eligible deferred compensation plan unless they are performing services for the transferee employer.

**(3) In the Case of Plan-to-Plan Transfers of Plan Assets Among an Employer's Code Section 457(b) Plans.**

(a) The transfer must be to another governmental eligible deferred compensation plan maintained by the same employer (and, for this purpose, the Employer is not treated as the same employer if the Participant's compensation is paid by a different entity);

(b) The transferee governmental eligible deferred compensation plan must provide for transfers;

(c) The Participant or Beneficiary whose amounts deferred are being transferred must have deferred compensation immediately after the transfer at least equal to the amount deferred with respect to the Participant or Beneficiary immediately before the transfer;

(d) The Participant or Beneficiary whose deferred amounts are being transferred must not be eligible to make additional annual deferrals under the transferee governmental eligible deferred compensation plan unless he or she is performing services for the transferee employer.

No transfer shall occur unless the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer.

The Employer may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Code section 457(b), and to assure that transfers are provided for under such plan.

## **Section 6.2 Eligible Rollover Distributions**

(a) **Effective Date.** This Section 6.2 is effective January 1, 2002, except as otherwise indicated.

(b) **Incoming Rollovers.** If permitted by the Adoption Agreement, an eligible rollover distribution may be accepted from an eligible retirement plan (as such term may be limited by the Adoption Agreement) maintained by another employer and credited to a Participant's or surviving spouse Beneficiary's Account under the Plan. The Employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code section 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code section 402(c)(8)(B). The Plan shall separately account for eligible rollover distributions from any eligible retirement

plan that is not an eligible deferred compensation plan described in Code section 457(b) maintained by an eligible governmental employer described in Code section 457(e)(1)(A). Any such rolled-over amount shall not be treated as a deferral subject to the limitations of Article IV.

(c) **Outgoing Rollovers.** 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, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(d) **Definitions.**

(1) **Eligible Rollover Distribution.** An eligible rollover distribution is any distribution of all or any portion of the balance to 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 (not less frequently than annually) made for the life (or 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 years or more; any distribution to the extent such distribution is required under Code sections 401(a)(9) and 457(d)(2); and any distribution made upon the hardship of the employee. For purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(2) **Eligible Retirement Plan.** An eligible retirement plan is an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code sections 403(a) or 403(b), a qualified trust described in Code section 401(a), or an eligible deferred compensation plan described in Code section 457(b) which is maintained by an eligible governmental employer described in Code section 457(e)(1)(A), that accepts the distributee's eligible rollover distribution.

(3) **Distributee.** 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 Code section 414(p), are distributees with regard to the interest of the spouse or former spouse.

(4) **Direct Rollover.** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(e) **Direct Rollover to Roth IRA.** Notwithstanding the foregoing, effective January 1, 2008, amounts may be directly rolled over to a Roth IRA if such rollover complies with Code section 408A(c)(3)(B) and any applicable Treasury Regulations thereunder.

### **Section 6.3 Non-Spouse Beneficiary Rollovers**

On and after the date set forth in the Adoption Agreement, a Participant's non-spouse Beneficiary shall be treated as distributee and may elect to transfer a distribution that would be an eligible rollover distribution if it were made to a spousal beneficiary to an individual retirement account described in Code section 408(a) or an individual retirement annuity described in Code section 408(b), that will be treated as an inherited IRA within the meaning of Code section 408(d)(3)(C), pursuant to a direct rollover. A trust may be a designated beneficiary if it meets the requirements of Code section 401(a)(9)(E) and applicable Treasury Regulations thereunder. This provision shall be interpreted consistent with Code section 402(c)(11), applicable Treasury Regulations thereunder, and IRS Notice 2007-7 and other applicable guidance. Notwithstanding the foregoing, to the extent and in the manner required by the Code and applicable Treasury Regulations, the non-spouse Beneficiary rules in this Section 6.3 shall apply to Plan Years beginning after December 31, 2009.

### **Section 6.4 Transfers and Permissive Service Credit**

All or a portion of a Participant's Account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in Code section 414(d)) if such transfer is (A) for the purchase of permissive service credit (as defined in Code section 415(n)(3)(A)) under such plan, or (B) a repayment to which Code section 415 does not apply by reason of subsection (k)(3) thereof, within the meaning of Code section 457(e)(17).

### **Section 6.5 Distribution of Certain Previously Rolled Over Amounts**

(a) **Availability for Distribution.** Amounts previously rolled over to the Plan shall be distributable in accordance with procedures adopted by the Plan Administrator; provided, however, that distributions under this Section shall only be permitted to the extent that each distribution satisfies the requirements of the Code, any Treasury Regulations thereunder, and any other regulatory guidance from the Internal Revenue Service.

(b) **Application of Code Section 72(t).** For purposes of Code section 72(t), a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Code section 4974(c)(1) to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Code section 4974(c)).

## **Article VII Trust and Investment of Accounts**

### **Section 7.1 Investment of Deferred Compensation**

The assets of the Plan shall be held in the Trust for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 8.6.

### **Section 7.2 Payment of Benefits**

The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Plan Administrator, or by any custodian or other person so authorized by the Plan Administrator to make such disbursement.

### **Section 7.3 Investment Options**

In accordance with uniform and nondiscriminatory rules established by the Plan Administrator, the Employer may, at its sole discretion, permit a Participant to direct his or her Accounts to be invested in one or more investment options available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Plan Administrator. Neither the Employer, the Plan Administrator, the Trustee (if any), Prudential nor any other person shall be liable for any losses incurred by virtue of following such directions or with any administrative delay in implementing such directions.

If the Employer in its sole discretion does not permit or ceases to permit Participants to select investment options, or if the Employer permits such Participant elections and a Participant fails to make such an election, the applicable investment options shall be determined by the Employer in its sole discretion.

### **Section 7.4 Valuation of Accounts**

Each Participant's Account shall be adjusted to reflect any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and shall also be adjusted to reflect any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.

As of each Valuation Date, a Participant's Account shall be valued by adjusting the value of Account to reflect the fair market value of the investment option(s) credited

to the Participant's Account. Each Participant's gains and losses shall only be allocated to him or her and shall not be allocated to the Account of any other Participant.

### **Section 7.5 Crediting of Accounts**

A Participant's Account shall reflect the amount and value of the investments or other property obtained by the Employer through the investment of the Participant's Deferred Compensation pursuant to Sections 7.3 and 7.4. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Enrollment Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation.

### **Section 7.6 Limitation on Liability**

In no event shall the Employer's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account. Neither the Employer, the Plan Administrator, the Trustee (if any), Prudential nor any other party shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.



## **Article VIII Administration**

### **Section 8.1 Plan Administrator**

This Plan shall be administered by the Plan Administrator, who shall represent the Employer in all matters concerning the administration of this Plan. The Plan Administrator shall serve at the pleasure of the Employer and the Employer shall have the right to appoint, in its sole and absolute discretion, any successor Plan Administrator. The appointment of a successor Plan Administrator shall be evidenced by the execution of an addendum to the Adoption Agreement.

### **Section 8.2 Power and Authority**

Subject to any applicable laws and any approvals required by the Employer, the Plan Administrator shall have full power and authority to adopt rules and regulations for the administration of the Plan, and to interpret, alter, amend, or revoke any rules and regulations so adopted.

### **Section 8.3 Presumption of Fairness**

Every action taken by the Plan Administrator shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon him. The Plan Administrator shall be deemed to have exercised reasonable care, diligence and prudence and to have acted impartially as to all persons interested, unless the contrary be proven by affirmative evidence. The Plan Administrator's decisions are final, binding, and conclusive on all interested persons for all purposes and shall be afforded the maximum deference permitted by applicable law. The Plan Administrator shall not be liable for amounts of compensation deferred by Participants or for other amounts payable under the Plan.

### **Section 8.4 Delegation of Duties**

Subject to any applicable laws, including any limitations on delegation imposed in such laws, and any approvals required by the Employer, the Plan Administrator may delegate any or all of his or her powers and duties hereunder to another person, persons, or entity, and may pay reasonable compensation for such services as an administrative expense of the Plan, to the extent such compensation is not otherwise paid.

## **Section 8.5 Other Parties**

Any person or entity which issues policies, contracts, or investment media to the Employer or in respect of a Participant is not a party to this Plan and such person or entity shall have no responsibility, accountability or liability to the Employer, the Plan Administrator, any Participant, or any Beneficiary with regard to the operation or adequacy of this Plan, including any future amendments made thereto.

## **Section 8.6 Expenses**

(a) Administrative expenses of the Plan shall be paid from Participants' Accounts unless the Employer pays such expenses directly or the expenses are paid from some other legally permissible source.

(b) Administrative expenses shall include, but not be limited to, all reasonable expenses incurred in the administration of the Plan, including all taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the Plan or in respect to the Trust, or the income thereof, and all commissions on acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust. In addition, reimbursement for reasonable expenses incurred by the Plan Administrator in performance of its duties hereunder or the Trustee (if any) in performance of its duties under the Trust Agreement (including but not limited to fees for legal, accounting, investment and custodial services) shall also be considered administrative expenses.

(c) Expenses paid from Participants' Accounts under this Section 8.6 shall be paid from the Participants' Accounts to which such expenses are allocable.

## **Section 8.7 Compliance with Statutes and Regulations**

Notwithstanding any provision of the Plan to the contrary, the Plan shall be operated and administered by the Plan Administrator in a manner such that all applicable statutes and regulations of the State set forth in the Adoption Agreement are complied with by the Plan.

## Article IX Loans to Participants

### Section 9.1 Availability of Loans to Participants

(a) If permitted under the Adoption Agreement, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.

(b) The Plan Administrator shall establish written guidelines governing the granting of loans, provided that such guidelines are not inconsistent with the provisions of this Article IX, and that loans are made available to all Participants on a reasonably equivalent basis.

### Section 9.2 Terms and Conditions of Loans to Participants

Any loan by the Plan to a Participant under Section 9.1 of the Plan shall satisfy the following requirements:

(a) **Availability.** Loans shall be made available to all Participants on a reasonably equivalent basis.

(b) **Interest Rate.** Loans must be adequately secured and bear a reasonable interest rate.

(c) **Foreclosure.** In the event of default on any installment payment, the outstanding balance of the loan shall be a deemed distribution. In such event, an actual distribution of a plan loan offset amount will not occur until a distributable event occurs in the Plan.

(d) **Reduction of Account.** Notwithstanding any other provision of this Plan, the portion of the Participant's Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan.

(e) **Amount of Loan.** At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant from the Plan and from all other plans of the Employer that are qualified employer plans under Code section 72(p)(4) shall not exceed the lesser of:

(1) \$50,000, reduced by the excess (if any) of

(a) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made, over

(b) The outstanding balance of loans from the Plan on the date on which such loan is made; or

(2) One-half of the value of the Participant's interest in all of his or her Accounts under this Plan.

(f) **Application for Loan.** The Participant must give the Plan Administrator adequate written notice, as determined by the Plan Administrator, of the amount and desired time for receiving a loan. No more than the number of loans set forth in the Adoption Agreement may be made by the Plan to a Participant's in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.

(g) **Length of Loan.** Any loan issued shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time of the loan is made) after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended for up to one (1) year during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this subsection (h), with a revised payment schedule (within such term) instituted at the end of such period of suspension.

(h) **Prepayment.** The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.

(i) **Promissory Note.** The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.

(j) **Security.** The loan shall be secured by an assignment of the Participant's right, title and interest in and to his or her Account.

(k) **Assignment or Pledge.** For the purposes of paragraphs (f) and (g), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.

(l) **Other Terms and Conditions.** The Plan Administrator shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan under Code section 457, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Plan Administrator, in its discretion for any reason, may also fix other terms and conditions of the loan, including, but not limited to, the provision of grace periods following an event of default, not inconsistent with the provisions of this Article IX, Code section 72(p), and any Treasury Regulations thereunder.

## Article X Non-Assignability

### Section 10.1 In General

Except as provided in Article IX and Section 10.2, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non-transferable.

### Section 10.2 Domestic Relations Orders

(a) **Allowance of Transfers.** To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) that (i) relates to the provision of child support, alimony payments, or marital property rights, (ii) is made pursuant to a state domestic relations law, and (iii) is permitted under Code sections 414(p)(11) and (12), any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the Participant. Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the spouse, former spouse, or child who shall be entitled to make investment selections with respect thereto in the same manner as the Participant; any amount so set aside for a spouse, former spouse, or child shall be paid out in a lump sum at the earliest date that benefits may be paid to the Participant, unless the order directs a different time or form of payment. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Code section 457 unless such distribution is consistent with the provisions of Code section 414(p)(10) and is explicitly permitted under the uniform procedures described in Section 10.2(d) below. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding.

(b) **Release from Liability to Participant and Beneficiaries.** The Employer's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to a spouse, former spouse, or child pursuant to paragraph (a) of this Section and the Participant and his or her Beneficiaries shall be deemed to have released the Employer and the Plan Administrator from any claim with respect to such amounts.

(c) **Participation in Legal Proceedings.** The Employer and Plan Administrator shall not be obligated to defend against or set aside any judgment, decree, or order described in paragraph (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the

Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer or Plan Administrator to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Employer's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer and Plan Administrator shall be authorized to disclose information relating to the Participant's Account to the Participant's spouse, former spouse, dependent, or child (including the legal representatives of the spouse, former spouse, or child), or to a court.

(d) **Determination of Validity of Domestic Relations Orders.** The Plan Administrator shall establish uniform procedures for determining the validity of any domestic relations order. The Plan Administrator's determinations under such procedures shall be conclusive and binding on all parties and shall be afforded the maximum amount of deference permitted by law.

## **Article XI Relationship to other Plans and Employment Agreements**

### **Section 11.1 Non-Exclusivity of Plan**

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system.

### **Section 11.2 No Guarantee of Employment**

Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.



## **Article XII Amendment or Termination of Plan**

### **Section 12.1 Amendment**

The Employer may amend this Plan at any time. An amendment shall not serve to divest a Participant or Beneficiary of his or her vested interest in an Account held in the Trust, provided, however, that this restriction shall not prevent the Employer from adopting an amendment to the Plan that alters any other benefit, right or feature of the Plan, including, but not limited to, the Plan's forms of payout and the timing rules for payouts.

### **Section 12.2 Termination**

The Employer may terminate this Plan at any time. The assets of the Plan will be distributed or transferred pursuant to the relevant provisions of the contractual agreements between the Employer and Prudential, provided, however, that upon termination of the Plan, the Employer may elect that each Account shall be distributed in a lump sum as soon as administratively practicable without respect to any other benefit, right or feature of the Plan. Notwithstanding the foregoing, any such distributions or transfers shall comply with the requirements of the Code, any applicable Treasury Regulations thereunder, and the laws of State set forth in the Adoption Agreement.

### **Section 12.3 Protection of Participant Benefits**

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Code section 457(b) or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to the amount of his or her benefits under the Plan determined immediately before the date of the amendment or termination.

### **Section 12.4 Additional Statutory Requirements**

Notwithstanding any provision of the Plan to the contrary, no amendment of this Plan shall become effective unless it complies with any applicable law or regulation of the State set forth in the Adoption Agreement.

## **Article XIII Miscellaneous**

### **Section 13.1 Applicable Law**

This Plan and the Trust shall be construed under the laws of the State set forth in the Adoption Agreement, except that if (1) the Trustee is the Prudential Trust Company or its successor, the Trust shall be construed under the laws of the State of Pennsylvania or (2) the Trustee is Prudential Bank & Trust, FSB, the Trust shall be construed under the laws of the State of Connecticut, with the intent that it meet the requirements of an “eligible deferred compensation plan” under Code section 457(b), as amended. The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Code section.

### **Section 13.2 Gender Neutrality**

The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

### **Section 13.3 Military Service**

Notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of Code section 414(u) and Code section 401(a)(37).

### **Section 13.4 Electronic Writings**

Notwithstanding any provision of the Plan to the contrary, commonly accepted means of electronic communication approved of by both the Employer and Prudential may be used for any activity under this Plan for which a writing is required to the extent that such use complies with Treasury Regulation section 1.401(a)-21 and other applicable guidance

### **Section 13.5 Titles and Subheadings**

The titles and subheadings used in this document are for reference purposes only.

### **Section 13.6 Compliance With Code Section 457(b)**

Notwithstanding any provision of the Plan to the contrary, the Plan shall be interpreted and administered in a manner consistent with Code section 457(b) and any applicable guidance thereunder. In the event of a conflict between the terms of the Plan and Code section 457(b) or any applicable guidance thereunder, the Plan shall comply with the requirements of Code section 457(b) and any applicable guidance thereunder notwithstanding any consistent Plan terms.

### **Section 13.7 Definition of Spouse**

Notwithstanding any provision of the Plan to the contrary, effective June 26, 2013, for Plan purposes, the determination of whether an individual is a person's "spouse" or "surviving spouse" shall not be made by applying the provisions of the Defense of Marriage Act of 1996. Effective June 26, 2013 through September 15, 2013, unless otherwise provided in the Adoption Agreement, for Plan purposes, the term "spouse" or "surviving spouse" will include the same-sex spouse of an individual only if the individual was domiciled in a state that recognized same-sex marriages at that time. Effective September 16, 2013, in accordance with Revenue Ruling 2013-17, for Plan purposes, the term "spouse" or "surviving spouse" will include the same-sex spouse of an individual whose marriage is validly entered into in a state whose laws authorize the marriage of two individuals of the same sex at that time, even if the individuals are domiciled in a state that does not recognize the validity of same-sex marriages. Individuals, whether part of an opposite-sex or same-sex couple, who have entered into a registered domestic partnership, civil union, or other similar formal relationship that is not denominated as marriage under the laws of that state, shall not be treated as married under the Plan. For purposes of this Section 13.7, the term "state" means any domestic or foreign jurisdiction having the legal authority to sanction marriages.

## **Article XIV Roth Elective Deferrals and Conversions**

### **Section 14.1 General Application**

(a) This Article XIV will apply to contributions beginning with the effective date specified in the Adoption Agreement but in no event before the first day of the first Plan Year beginning on or after January 1, 2011.

(b) Effective as of January 1, 2011, or such later date as set forth in the Adoption Agreement, the Plan will accept Roth elective deferrals made on behalf of Participants and Roth rollover contributions. A Participant's Roth elective deferrals and Roth rollover contributions will each be allocated to a separate account maintained for such deferrals as described in Section 14.2.

(c) Unless specifically stated otherwise, Roth elective deferrals and Roth rollover contributions will be treated as Deferred Compensation for all purposes under the Plan; provided, however, that a Participant or Beneficiary may elect, in the manner prescribed by the Plan Administrator, to override the default rules governing where in a Plan's distribution hierarchy Roth elective deferral contributions and/or Roth rollover contributions will fall.

### **Section 14.2 Separate Accounting**

(a) Contributions and withdrawals of Roth elective deferrals and/or Roth rollover contributions will be credited and debited to the Roth elective deferral and/or Roth rollover contributions account maintained for each Participant.

(b) The Plan will maintain a record of the amount of Roth elective deferrals in each Participant's Roth elective deferral account. The Plan will maintain a record of the amount of Roth elective rollover contributions in each Participant's Roth rollover contributions account.

(c) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth elective deferral account, Roth rollover contributions account, and the Participant's Account under the Plan to the extent required by Code section 402A and the Treasury Regulations thereunder.

(d) Except as provided in Section 14.5 below, no contributions other than Roth elective deferrals and properly attributable earnings will be credited to each Participant's Roth elective deferral account and no contributions other than Roth rollover contributions

and properly attributable earnings will be credited to each Participant's Roth rollover contributions account.

### **Section 14.3 Direct Rollovers**

(a) Notwithstanding Section 6.2, a direct rollover of a distribution from a Roth elective deferral account under the Plan will only be made to another Roth elective deferral account under an applicable retirement plan described in Code Section 402A(e)(1) or to a Roth IRA described in Code section 408A, and only to the extent the rollover is permitted under the rules of Code section 402(c).

(b) Notwithstanding Section 6.2 and except as provided in Section 14.5 below, to the extent provided in the Adoption Agreement, the Plan will accept a rollover contribution to a Roth rollover contribution account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in Code section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code section 402(c).

### **Section 14.4 Correction of Excess Deferrals**

(a) In the case of a distribution of excess Deferred Compensation, an employee may designate the extent to which the excess amount is composed of pre-tax Deferred Compensation and Roth elective deferrals but only to the extent such types of deferrals were made for the Plan Year.

(b) If the employee does not designate which type of Deferred Compensation is to be distributed, the Plan will distribute pre-tax Deferred Compensation first.

### **Section 14.5 In-Plan Roth Rollover**

Notwithstanding anything in the Plan to the contrary, to the extent provided in the Adoption Agreement, effective January 1, 2011, or such later date as provided in the Adoption Agreement, vested pre-tax amounts in a Participant's or surviving spouse Beneficiary's Account may be directly rolled over to a Participant's or surviving spouse Beneficiary's Roth elective deferral account, if such rollover complies with Code section 402(c), any applicable Treasury Regulations thereunder, and any other applicable Internal Revenue Service guidance. Notwithstanding anything in the Plan to the contrary, to the extent provided in the Adoption Agreement, effective for in-Plan Roth rollovers made on or after January 1, 2013, or such later date as provided in the Adoption Agreement, vested pre-tax amounts in a Participant's or surviving spouse Beneficiary's Account may be directly rolled over to a Participant's or surviving spouse Beneficiary's Roth elective

deferral account, regardless of whether such vested pre-tax amounts are otherwise distributable under the Internal Revenue Code, if such rollover complies with Code section 402A(c)(4)(E), any applicable Treasury Regulations thereunder, and any other applicable Internal Revenue Service guidance.

#### **Section 14.6 Definition of Roth Elective Deferrals**

A Roth elective deferral is an elective deferral that is

(1) Designated irrevocably by the Participant at the time of the cash or deferred election as a Roth elective deferral that is being made in lieu of all or a portion of the pre-tax Deferred Compensation the Participant is otherwise eligible to defer under the Plan; and

(2) Treated by the Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

**PRUDENTIAL RETIREMENT**  
**SPECIMEN GOVERNMENTAL 457(b) PLAN**  
**ADOPTION AGREEMENT**

**This Adoption Agreement is to be used in conjunction with the  
Prudential Retirement  
Specimen Governmental 457(b) Plan Document**

**This Adoption Agreement is not to be used for  
a tax exempt organization 457(b) plan.**

**This document has not been amended to reflect specific provisions of applicable  
state law. Each adopting entity should review its local and state law requirements  
before either adopting the Prudential Retirement Specimen Governmental 457(b)  
Plan or  
executing this Adoption Agreement.**

*Prudential and its affiliates do not provide tax or legal advice. This specimen document  
is for the use of the Employer's tax or legal advisors.*

*Revised: March 2017*

***PRUDENTIAL RETIREMENT  
SPECIMEN GOVERNMENTAL 457(b) PLAN***

**ADOPTION AGREEMENT**

<b>Part I Adopting Entity</b>
-------------------------------

Name of Employer: City of El Paso

Address: 300 North Campbell

City: El Paso

State: Texas

Zip: 79901

Employer Contact: Managing Director of Internal Services

Contact Phone Number: (915) 212-1275

Employer's Tax ID: 74-6000749



**PRUDENTIAL RETIREMENT  
SPECIMEN GOVERNMENTAL 457(b) PLAN**

**ADOPTION AGREEMENT**

<b>Part II Plan Administrator</b>
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Name of Plan Administrator: City of El Paso  
\_\_\_\_\_

Address: 300 North Campbell  
\_\_\_\_\_

City: El Paso  
\_\_\_\_\_

State: Texas  
\_\_\_\_\_

Zip: 79901  
\_\_\_\_\_

Plan Administrator Phone Number: (915) 212-1275  
\_\_\_\_\_

Plan Administrator Fax Number:  
\_\_\_\_\_

Plan Administrator Contact: Managing Director of Internal Services  
\_\_\_\_\_

E-mail (if available):  
\_\_\_\_\_

***PRUDENTIAL RETIREMENT  
SPECIMEN GOVERNMENTAL 457(b) PLAN***

**ADOPTION AGREEMENT**

<b>Part III Plan Data</b>
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1. This Plan is (*check one*):        A new plan.  
      A restatement of an existing plan.

*Caution: If this is a restatement of an existing plan, the Employer should carefully review the prior Plan document to ensure that any changes from the terms of the prior Plan document which may result from the adoption of the restatement are intended.*

2. Name of Plan. The name of the Plan is (*provide name*):

City of El Paso 457(b) Deferred Compensation Plan for Public Employees

3. Plan Year.

- (a) The Plan Year is (*a twelve month period – e.g., Jan. 1.– Dec. 31*):

January 1 – December 31

- (b) The Plan  will /  will not (*check one*) have a short initial Plan Year. The short Plan Year will be (*a less than twelve month period – e.g., Oct. 1 – Dec. 31*):

September 1, 2004 – December 31, 2004\_

4. Effective Date.

(*provide information required by Item 4(a) or 4(b) (as applicable)*):

- (a) For new plans:

- (i) The Effective Date of the Plan is (*provide date*):
- 

- (b) For restated plans:

- (i) The initial effective date of the Plan was (*provide date*):

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September 1, 2004

- (ii) The Effective Date of this amendment and restatement of the Plan is  
(*provide date*):

February 1, 2021

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<b>Part IV Eligibility Requirements</b>
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5. Eligible Employees.

(a) The following Employees of the Employer are eligible to participate in the Plan (*check one*):

- All employees.
- Only the following classes of employees (*please specify*):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

X All employees other than the following classes (*please specify*):

Temporary Employees

(b) Independent contractors performing services for the Employer who satisfy the eligibility criteria selected in Item 5(a)  are / X are not (*check one*) permitted to participate in the Plan.

6. Entry Date. The following is the Plan's Entry Date (*check one*):

- The first day of the Plan Year and the first day of each calendar month thereafter.
- The first day of the Plan Year and the first day of each calendar quarter thereafter.
- The first day of the Plan Year and the first day of the seventh (7th) month of the Plan Year.
- X Other (*please specify*):

Immediate \_\_\_\_\_

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<b>Part V Elective Deferrals</b>
----------------------------------

7. Includible Compensation.

(a) Except as provided below in the case of independent contractors, Includible Compensation means (*check one*):

- Safe Harbor Compensation as described in Code section 415(c)(3) and the regulations promulgated thereunder.
- Code section 3401(a) wages (as modified by Code section 415(c)(3) and the regulations promulgated thereunder).
- Information required to be reported under Code sections 6041, 6051, and 6052 (e.g., the “Wages, Tips and Other Compensation” box on Form W-2) (as modified by Code section 415(c)(3) and the regulations promulgated thereunder).
- Other (*please specify a definition that complies with the requirements of Code section 415(c)(3) and the regulations promulgated thereunder (including any optional inclusions/exclusions under Code section 415(c)(3))*):

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The Includible Compensation of independent contractors eligible to participate in the Plan pursuant to an election under Item 5(b) shall be determined in accordance with the special rules for self-employed individuals in Code section 415(c)(3)(B) and the regulations promulgated thereunder.

(b) Includible Compensation  does /  does not (*check one*) include amounts treated as “deemed 125 compensation” because of the Employer’s requirement that its Employees participate in an Employer-sponsored health insurance program unless they state that they are provided health care coverage elsewhere.

Note: Pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008, amounts paid as differential military pay are included in the Internal Revenue Code definition of includible compensation.

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8. Minimum Deferrals.

(a) The minimum amount and/or percentage by which a Participant must elect to have his or her Includible Compensation reduced and contributed to the Plan as Deferred Compensation is equal to (*check one*):

X There is no minimum amount or percentage.

Other (*complete Items 8(a)(i) and/or 8(a)(ii), as necessary*):

(i) \$ \_\_\_\_\_

(ii) \_\_\_\_\_% of Includible Compensation

(b) The limits described in Item 8(a) shall be applied on the following basis:

Annually.

Monthly.

X Pay Period by Pay Period

Other (*please specify*)

\_\_\_\_\_  
\_\_\_\_\_

9. Maximum Deferrals.

(a) The maximum annual amount and/or percentage by which a Participant may elect to have his or her Includible Compensation reduced and contributed to the Plan as Deferred Compensation (other than as a catch-up contribution) is equal to (*check one*):

X The Dollar Limitation (e.g., the amounts set forth in the chart below) and Percentage Limitation (e.g., 100% of Includible Compensation) in effect under Code section 457(b)(2) for the applicable Plan Year.

<u>Year</u>	<u>Dollar Limitation</u>
2017	\$18,000
2018 and later	As adjusted for the cost-of-living

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- Other (*complete Items 9(a)(i) and 9(a)(ii), as necessary*):
  - (i) \$ \_\_\_\_\_
  - (ii) \_\_\_\_\_% of Includible Compensation (not in excess of 50%). If no percentage is selected a default maximum percentage of 50% will automatically apply.

(b) The limits described in Item 9(a) shall be applied on the following basis:

- Annually.
  - Monthly.
  - Pay Period by Pay Period
  - Other (*please specify*)
- \_\_\_\_\_
- \_\_\_\_\_

10. Roth Elective Deferrals. The Plan  does /  does not (*check one*) permit Roth elective deferral contributions. These contributions will be permitted on and after \_\_\_\_\_ (*indicate a date on or after January 1, 2011*).

Note: Roth elective deferral contributions will be treated as pre-tax elective deferral contributions for all purposes under the Plan, including, but not limited to, eligibility for matching contributions. In addition, Roth elective deferral contributions must be permitted under the Plan to permit Roth rollover contributions.

11. Last Three Years Catch-Up Contributions. The maximum annual amount of catch-up contributions available in the last three taxable years before Normal Retirement Age which may be made by any Participant shall not exceed (*check one*):

- The Catch-Up Contribution limit (e.g., double the amounts set forth in the chart in Item 9(a)) in effect under Code section 457(b)(2) for the applicable Plan Year.
- Other (*please specify a lower dollar amount*):

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12. Age 50 Catch-Up Contributions. The Plan X will /  will not (*check one*) permit Participants to make Code section 414(v) catch-up contributions up to the amounts set forth in the chart below (as permitted under the rules coordinating last three years catch-up contributions and Code section 414(v) catch-up contributions).

<u>Year</u>	<u>Age 50 Catch-up Limit</u>
2017	\$6,000
2018 and later	As adjusted for the cost-of-living

Note: If the Plan permits Roth elective deferral contributions, Roth catch-up contributions will also be permitted and treated as pre-tax catch-up contributions for all purposes under the Plan.

13. Accumulated Sick, Vacation, and Back Pay.

- (a) The Plan X does /  does not (*check one*) permit Participants to contribute the value of their accumulated sick pay to the Plan.
- (b) The Plan X does /  does not (*check one*) permit Participants to contribute the value of their accumulated vacation pay to the Plan.
- (c) The Plan X does /  does not (*check one*) permit Participants to contribute the value of their accumulated back pay to the Plan.

Note: Such elections may only be made in accordance with the requirements of Code section 457(b) and the regulations promulgated thereunder.

14. Automatic Enrollment.

- (a) The Plan X does /  does not have automatic enrollment. If not, skip to Item 16. If the Plan has automatic enrollment, the Plan is an (*check one*):
- X Automatic Contribution Arrangement (ACA). The ACA will be effective: September 1, 2015 (“ACA Effective Date”).
- Eligible Automatic Contribution Arrangement (EACA). The EACA will be effective: \_\_\_\_\_ (“EACA Effective Date”).



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- (b) Automatic Enrollment applies to (*check one*):
- All Participants.
  - All Participants, except those who have in effect an Enrollment Agreement on the ACA Effective Date or EACA Effective Date, as applicable, provided that the elective deferral amount under the Enrollment Agreement is at least equal to the Automatic Deferral Percentage.
  - All Participants, except those who have in effect an Enrollment Agreement on the ACA Effective Date or EACA Effective Date, as applicable, regardless of the elective deferral amount under the Enrollment Agreement.
  - All Participants, except those who have in effect an Enrollment Agreement on the ACA Effective Date or EACA Effective Date, as applicable, provided that the elective deferral amount under the Enrollment Agreement is greater than 0%.
  - Each Employee whose Entry Date is on or following the ACA Effective Date or EACA Effective Date, as applicable.
  - Each Employee whose date of hire is on or following the ACA Effective Date or EACA Effective Date, as applicable.
  - Other: \_\_\_\_\_  
\_\_\_\_\_  
*(The Employer may further describe affected Participants, e.g., non-collective bargaining employees or "division A employees.")*
- (c) The Automatic Deferral Percentage of any Participants making automatic deferrals on the date immediately prior to the ACA Effective Date or EACA Effective Date, as applicable, in an amount that is greater than the applicable Automatic Deferral Percentage described in Item 14(f) below  shall /  shall not be decreased.
- (d) The initial Automatic Deferral Percentage  does /  does not apply to Employees rehired after the ACA Effective Date or EACA Effective Date, as applicable.
- (e) Roth elective deferrals (*check one or more, as applicable*):
- Automatic deferrals shall be treated as Roth elective deferrals rather than as pre-tax deferrals.

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- If the Employer elects Item 14(b)(ii), for Participants that have a Roth elective deferral election in place, the Automatic Deferral Percentage includes only the incremental percentage amount necessary to increase the Participant’s pre-tax deferral so that when aggregated with the Roth elective deferral is equal to the Automatic Deferral Percentage.

(f) Automatic Deferral Percentage:

For each affected Participant, the Employer will withhold 1% from the Participant’s Includible Compensation each payroll period as the Automatic Deferral Percentage, unless the Participant makes a Contrary Election.

(g) Automatic Increase of Automatic Deferral Percentage

The Automatic Deferral Percentage  will / X will not increase in Plan Years following the Plan Year containing the ACA Effective Date or EACA Effective Date, as applicable (or, if later, the Participant’s ACA Effective Date or EACA Effective Date). If the Automatic Deferral Percentage will increase, complete the rest of this paragraph (g) and paragraphs (h) and (i) below.

Check one of the following (*The Employer may define different increases for different groups of Participants or may otherwise limit the Automatic Increase feature. Any such provisions must be definitely determinable*):

- The Participant’s pre-tax deferrals will increase by \_\_\_ % per year up to a maximum of \_\_\_% of Includible Compensation unless the Participant has filed a Contrary Election after the effective date of this election or any amendment thereto.
- The Automatic Deferral Percentage will be:

<u>Plan Year of application to a Participant</u>	<u>Automatic Deferral Percentage</u>
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

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- Other: \_\_\_\_\_  
\_\_\_\_\_
- (h) The increase in the Automatic Deferral Percentage will be effective as of the following day of each Plan Year (“Change Date”) (*check one*):
- First day of the Plan Year.
  - Anniversary of the Participant’s date of hire.
  - Other (*must be a specified or definitely determinable date that occurs at least annually*): \_\_\_\_\_  
\_\_\_\_\_
- (i) The increase in the Automatic Deferral Percentage will apply to a Participant beginning with the first Change Date after the Participant first has automatic deferrals withheld, unless selected otherwise below:
- The increase will apply as of the second Change Date thereafter.
  - For Participants automatically enrolled in the same Plan Year as the first Change Date, the increase will apply as of the second Change Date thereafter.
- (j) If the Plan is an EACA, the permissible withdrawal provisions of Code section 414(w) (*check one*):
- Do not apply.
  - Apply within 90 days of the first automatic deferral.
  - Apply within \_\_\_ days of the first automatic deferral (*may not be less than 30 nor more than 90 days*).
- (k) For Plan Years beginning on or after January 1, 2010, any Participant who makes a Contrary Election (*check one; leave blank if an ACA*):
- Is a covered employee and continues to be covered by the EACA provisions. (*Under this Election, the Participant’s Contrary Election will remain in effect, but the Participant must receive the EACA annual notice.*)
  - Is not a covered employee and will not continue to be covered by the EACA provisions. (*Under this Election, the Participant no longer must receive the EACA annual notice.*)

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- (l) Automatic Deferrals overrides (*check one or more, as applicable*).
- With respect to an Employee who for an entire Plan Year did not have automatic deferrals made pursuant to a default election under the EACA, the Plan will not follow the special rule which allows the Plan to treat the Employee as not having had such contributions for any prior Plan Year as well.
  - The Plan will treat an Employee who had a severance from employment for an entire Plan Year as not having automatic deferrals made pursuant to a default election under the EACA for any prior Plan Year.

15. Automatic Escalation for Participants Who Have an Enrollment Agreement in Effect.

- (a) Automatic escalation  does /  does not apply (*check one*) to Participants who have an Enrollment Agreement in effect. If not, skip to Item 16.

- (b) If automatic escalation applies, complete (i)-(iv):

- (i) The Automatic Escalation applies to (*check one*):

- All Participants who have an Enrollment Agreement in effect for pre-tax deferrals of at least \_\_\_% of Includible Compensation.
- Each Participant whose hire date or rehire date is on or after the effective date of this election, or any amendment thereto, who files an Enrollment Agreement for pre-tax deferrals of at least \_\_\_% of Includible Compensation. In addition, each Participant who does not have an Enrollment Agreement in effect on the effective date of this election, or any amendment thereto, and subsequently files an Enrollment Agreement for pre-tax deferrals of at least \_\_\_% of Includible Compensation.
- Other: \_\_\_\_\_

*(The group of Participants must be definitely determinable.)*

- (ii) Automatic Increases (*check one*):

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- The Participant's pre-tax deferrals will increase by \_\_\_ % per year up to a maximum of \_\_\_ % of Includible Compensation unless the Participant has filed a Contrary Election after the effective date of this election or any amendment thereto. (*A Participant (1) that is deferring at a rate equal to or greater than the maximum on the effective date of this election, or any amendment thereto, or (2) that reaches the maximum on or after the effective date of this election, or any amendment thereto, must make an affirmative election to participate in Automatic Escalation if the Participant subsequently modifies the Participant's Enrollment Agreement to defer at a rate below the maximum.*)
- Other: \_\_\_\_\_

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*(The Employer may define different increases for different groups of Participants or may otherwise limit Automatic Escalation. Any such provisions must be definitely determinable.)*

(iii) The pre-tax deferrals will increase on the following day each Plan Year:

- First day of the Plan Year.
- Each anniversary of the Participant's date of hire.
- Other (*must be a specified or definitely determinable date that occurs at least annually*): \_\_\_\_\_

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<b>Part VI Loans</b>
----------------------

16. Loans.

- (a) The Plan X does /  does not (*check one*) permit Participants to take loans. If Plan loans are permitted, a copy of the Plan Administrator's loan procedures shall be provided to Prudential.
  
- (b) The following individuals are eligible to receive Plan loans (*check all that apply*):
  - All Plan Participants (including former Employees with balances in the Plan and Employees not currently eligible to contribute to the Plan).
  - X Only Plan Participants who are eligible to contribute to the Plan because they are eligible employees described in Item 5 at the time the loan is requested.

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<b>Part VII Additional Employer Contributions</b>
---

17. Discretionary Contributions.

- (a) The Employer  may /  may not (*check one*) make additional discretionary contributions to Participants' Accounts.
  
- (b) Participants shall vest in discretionary contributions on the following basis (*check one*):
  - Immediate, 100% vesting
  - Graded vesting at a rate of 20% per year (100% at 5 years)
  - Other (*please specify an alternative vesting schedule*):  
  
\_\_\_\_\_

Note: Under regulations issued by the Internal Revenue Service, contributions, and earnings on these contributions that are subject to a vesting schedule are recognized as contributions to the Plan when these amounts vest. As a result, if an Employer elects to apply a vesting schedule, Participants may be deemed to have impermissible excess contributions to the Plan in the year in which contributions vest if the amounts vested during the year causes an excess deferral for that year. Employers should discuss this issue with independent legal counsel prior to electing to apply a vesting schedule.

- (c) The Employer  will /  will not (*check one*) make discretionary contributions for a Participant who dies while in qualified military service pursuant to and in a manner consistent with Code section 414(u)(9). This provision is effective \_\_\_\_\_ (*please specify a date no earlier than January 1, 2007*).
  
- (d) The Employer  will /  will not (*check one*) make discretionary contributions for a Participant who becomes disabled while in qualified military service pursuant to and in a manner consistent with Code section 414(u)(9). This provision is effective \_\_\_\_\_ (*please specify a date no earlier than January 1, 2007*).

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18. Matching Contributions.

- (a) The Employer  will /  will not (*check one*) make mandatory contributions which match Participant contributions to the Plan. Mandatory matching contributions will be made based on the following formula (*please specify*):

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- (b) The Employer  may /  may not (*check one*) make discretionary matching contributions to the Plan.

- (c) Participants shall vest in matching contributions on the following basis (*check one*):

- Immediate, 100% vesting
- Graded vesting at a rate of 20% per year (100% at 5 years)
- Other (*please specify an alternative vesting schedule*):

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Note: Under regulations issued by the Internal Revenue Service, contributions, and earnings on these contributions that are subject to a vesting schedule are recognized as contributions to the Plan when these amounts vest. As a result, if an Employer elects to apply a vesting schedule, Participants may be deemed to have impermissible excess contributions to the Plan in the year in which contributions vest if the amounts vested during the year causes an excess deferral for that year. Employers should discuss this issue with independent legal counsel prior to electing to apply a vesting schedule.

- (d) The Employer  will /  will not (*check one*) make matching contributions for a Participant who dies while in qualified military service pursuant to and in a manner consistent with Code section 414(u)(9). This provision is effective (*check one*):



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- January 1, 2007
  - Other (*please specify a date no earlier than January 1, 2007*):
- 

(e) The Employer  will /  will not (*check one*) make matching contributions for a Participant who becomes disabled while in qualified military service pursuant to and in a manner consistent with Code section 414(u)(9). This provision is effective (*check one*):

- January 1, 2007
  - Other (*please specify a date no earlier than January 1, 2007*):
-

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<b>Part VIII Retirement Age and Commencement of Distributions</b>
---

19. Normal Retirement Age. A Participant's Normal Retirement Age for purposes of the Last Three Years Catch-Up Contributions described in Item 11 of this adoption agreement is (*check one*):

- Age 70½.
- Age 65
- Age 62
- Age 60
- Age 55

X Other (*please specify*): Age designated by a Participant within a range of ages beginning at the earliest retirement age at which the Participant could receive unreduced benefits under the Employer's defined benefit pension plan and ending at age 65.

Note: A Participant's Normal Retirement Age may not be (a) earlier than the earlier of age 65 or the earliest date that the Participant will become eligible to retire and receive under the Employer's basic defined benefit pension plan covering the Participant (or the Employer's money purchase pension plan in which the Participant also participates if the Participant is not eligible to participate in the Employer's basic defined benefit pension plan) immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age, if any, and (b) later than the Participant's mandatory retirement age (or age 70-1/2, if earlier), if any. Special rules may apply in the case of "qualified" police or firefighters.

20. Automatic Distribution Date. The date on which the distribution of a Participant's Plan benefit must commence is (*check one*):

- The latest date permitted under Code section 401(a)(9)
- 60 days after the close of the Plan Year in which a Participant's Severance Event occurs
- Age 70½
- Age 65
- Age 62
- Age 60
- Age 55

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X Other (*please specify*): The date on which a distribution of a Participant's Plan benefit greater than \$5,000 (including Rollovers) must commence is the latest date permitted under Code section 401(a)(9). The date on which the distribution of a Participant's Plan benefit of \$5,000 or less (including Rollovers) must commence is 90 days from the Participant's Severance event.

Note: Regardless of the election made in this Item 20, the Automatic Distribution Date will not apply to a Participant until he or she either (1) attains age 70½ and/or (2) has a Severance Event. In addition, the date selected as an Automatic Distribution Date may not be later than the latest date permitted under Code section 401(a)(9) and regulations promulgated thereunder.

21. Other Distributions Events.

- (a) The Plan X does /  does not (*check one*) permit a Participant to receive distributions of pre-tax contributions (including pre-tax rollover contributions) in-service starting in the calendar year in which the Participant attains age 70½.
- (b) The Plan  does /  does not (*check one*) permit a Participant to receive distributions of Roth contributions (including Roth rollover contributions) in-service starting in the calendar year in which the Participant attains age 70½.
- (c) The Plan X does /  does not (*check one*) permit a Participant to receive distributions while in military service pursuant to and in a manner consistent with the Heroes Earnings Assistance and Relief Tax Act of 2008. This provision is effective December 1, 2020 (*please specify a date no earlier than January 1, 2009*).

Any distributions pursuant to this Item 21(c) shall result in a suspension of a Participant's right to contribute Deferred Compensation for a period of six-months from the date of distribution in a manner consistent with Code section 414(u)(12)(B).

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<b>Part IX Distribution Options</b>
-------------------------------------

22. Normal Distribution.

(a) A Participant's Account may be paid in any of the following payment forms (*check all that apply*):

- X Option 1: One lump-sum payment;
- X Option 2: Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;
- X Option 3: Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant.
- x Option 4: Annual Payments equal to the minimum distributions required under Code section 401(a)(9), including the incidental death benefit requirements of Code section 401(a)(9)(G), over the life expectancy of the Participant or over the life expectancies of the Participant and his or her Beneficiary.
- X Option 5: Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer provided that such payments shall comply with the requirements of Code section 401(a)(9), including the incidental death benefit requirements of Code section 401(a)(9)(G).
- X Option 6 Other (*please specify*): Ad-hoc (partial) distributions
- X Option 7: A split distribution under which payments under Options 1, 2, 3, 5, or 6 commence or are made at the same time.
- X Option 8: A split distribution under which payments under Options 1, 2, 3, 5, or 6 commence or are made at different times.

Note: A Participant may not elect a payment form which causes his or her distributions to violate the minimum required distribution requirements of Code section 401(a)(9). If Option 4 is selected, another Option must also be selected for Participants who terminate

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service prior to their required beginning date under Code section 401(a)(9).

- (b) The default method of paying benefits to a Participant who has reached his or her Automatic Distribution Date but failed to timely elect to receive a distribution is the distribution method available under Option 1: One lump-sum payment for a Participant with a Plan benefit of \$5,000 or less (including Rollovers) and for a Participant with a Plan benefit greater than \$5,000 (including Rollovers) Option 4: Annual Payments equal to the minimum distributions required under Code section 401(a)(9), including the incidental death benefit requirements of Code section 401(a)(9)(G), over the life expectancy of the Participant or over the life expectancies of the Participant and his or her Beneficiary (*provide Option number*) of Item 22(a).

Note: If the default method of paying benefits (1) results in the payment of an “eligible rollover distribution” (*i.e.*, eligible to be rolled over to a 401(a), 403(a), 403(b), governmental 457(b) plan, or an IRA) that exceeds \$1,000 (including rollover contributions), (2) occurs because of a Participant’s reaching his or her Automatic Distribution Date prior to the Participant’s Normal Retirement Date (or age 62, if later), and (3) occurs on or after the effective date listed in Item 27, the distribution will be subject to the Code section 401(a)(31)(B) mandatory rollover rules.

23. Post-Retirement Death Benefits.

- (a) If a Participant dies after he or she has begun receiving benefits from the Plan, the Participant’s Account shall be paid to the Participant’s Beneficiary (*check one*):

- X In accordance with the minimum required distribution rules under Code section 401(a)(9).  
 In a single lump sum as soon as administratively practicable.

- (b) If a Participant dies after he or she has begun receiving benefits from the Plan, the Plan X does /  does not (*check one*) permit the Participant’s Beneficiary to designate a beneficiary for the Participant’s Account remaining at the Beneficiary’s death. This provision is in effect on and after February 1, 2021 (*indicate a date on or after January 1, 2014*).

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24. Pre-Retirement Death Benefits.

(a) If a Participant dies before he or she has begun receiving benefits from the Plan, the Participant's Beneficiary may elect to have the Participant's Account paid in one of the following payment forms (*check all that apply*):

- X Option 1: One lump-sum payment;
- X Option 2: Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Beneficiary, continuing until his or her Account is exhausted;
- X Option 3: Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Beneficiary.
- X Option 4: Annual Payments equal to the minimum distributions required under Code section 401(a)(9), including the incidental death benefit requirements of Code section 401(a)(9)(G), over the life expectancy of the Beneficiary.
- X Option 5: Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer provided that such payments shall comply with the requirements of Code section 401(a)(9), including the incidental death benefit requirements of Code section 401(a)(9)(G).
- X Option 6 Other (*please specify*): Ad-hoc (partial) distributions
- X Option 7: A split distribution under which payments under Options 1, 2, 3, 5, or 6 commence or are made at the same time.
- X Option 8: A split distribution under which payments under Options 1, 2, 3, 5, or 6 commence or are made at different times.

Note: A Beneficiary may not elect a payment form which causes his or her distributions to violate the minimum required distribution requirements of Code section 401(a)(9).

(b) The default method of paying benefits to a Beneficiary when a Participant has died before payment of his or her Plan benefit has commenced shall be (*check one*):

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- A lump sum.
  - A single life annuity.
  - Other (*please specify*): In accordance with the minimum required distribution rules under Code section 401(a)(9).
- (c) Distribution of the benefits described in this Item 24 shall commence (*check one*):
- On the date selected by the Beneficiary so long as such date complies with the distribution requirements of Code section 401(a)(9). If the Beneficiary fails to make an election before the 60th (*please provide the number of days, default is 60th day*) day following the death of the Participant, the distribution of benefits described in this Item 24 shall commence on the 61st (*please provide the number of days, default is the 61st day*) day following the Participant's death.
  - On the \_\_\_\_ (*please provide the number of days, default is the 61st day*) day following the Participant's death.
- (d) If a Participant dies before he or she has begun receiving benefits from the Plan, the Plan X does /  does not (*check one*) permit a Beneficiary to designate a beneficiary for the Participant's Account remaining at the Beneficiary's death. This provision is in effect on and after February 1, 2021 (*indicate a date on or after January 1, 2014*).
25. Unforeseeable Emergencies.
- (a) The Plan X does /  does not (*check one*) permit Participants to receive distributions in the event of Unforeseeable Emergencies. Unforeseeable Emergency distributions may be made from pre-tax contributions (including pre-tax rollover contributions) and  may /  may not (*check one*) be made from Roth contributions (including Roth rollover contributions).
  - (b) Participants X may /  may not (*check one*) receive a withdrawal under Item 25(a) based on Beneficiaries' Unforeseeable Emergencies.

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- (c) The Plan X does /  does not (*check one*) permit Beneficiaries of deceased Participants to receive distributions in the event of Unforeseeable Emergencies.

26. Voluntary In-Service Distributions.

- (a) The Plan X does /  does not (*check one*) permit voluntary in-service distributions when the provisions of applicable Treasury Regulations permitting such distributions are satisfied.
- (b) If the Plan permits voluntary in-service distributions, a Participant will be eligible to elect to receive a voluntary in-service distribution if the value of the Participant's Account is no greater than (*check one*):
- \$1,000
  - \$3,500
  - X \$5,000
  - Other (*please specify an amount not in excess of \$5,000*):

- 
- (c) For purposes of calculating the value of a Participant's Account for purposes of applying Item 26(b), a Participant's Account X will /  will not (*check one*) include amounts attributable to rollover contributions (as defined in Code section 411(a)(11)(D)).

27. Involuntary In-Service Distributions.

- (a) The Plan  does / X does not (*check one*) permit involuntary in-service distributions when the provisions of applicable Treasury Regulations permitting such distributions are satisfied. Such distributions shall be made pursuant to a uniform procedure established by the Plan Administrator that is applied in a uniform and non-discriminatory manner.
- (b) If the Plan permits involuntary in-service distributions, a Participant will receive a mandatory in-service distribution if the value of the Participant's Account is no greater than (*check one*):
- \$1,000
  - \$3,500



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- \$5,000
  - Other (*please specify an amount not in excess of \$5,000*):
- 

- (c) For purposes of calculating the value of a Participant's Account for purposes of applying Item 27(b), a Participant's Account  will /  will not (*check one*) include amounts attributable to rollover contributions (as defined in Code section 411(a)(11)(D)).

Note: If an involuntary distribution (1) results in the payment of an "eligible rollover distribution" (*i.e.*, eligible to be rolled over to a 401(a), 403(a), 403(b), governmental 457(b) plan, or an IRA) that exceeds \$1,000 (including rollover contributions), (2) occurs prior to the Participant's Normal Retirement Date (or age 62, if later), and (3) occurs on or after the effective date listed in Item 28, the distribution will be subject to the Code section 401(a)(31)(B) mandatory rollover rules.

28. Mandatory Rollovers. The Plan is subject to the Code section 401(a)(31)(B) mandatory rollover rules as of (*check one*):

- March 28, 2005
- January 1, 2006
- X Other (*please specify a date no later than the close of the first regular legislative session of the legislative body with the authority to amend the Plan that begins on or after January 1, 2006*):

February 1, 2021

29. Non-Spouse Beneficiary Rollovers. The Plan  does /  does not (*check one*) permit non-spouse Beneficiaries to elect to roll over payments owing to them to an inherited IRA to the extent permitted under Code section 402(c)(11). This provision is effective as of (*check one*):

- January 1, 2007
- January 1, 2008
- X Other (*please specify a date no earlier than January 1, 2007*):

January 1, 2010

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Note: Pursuant to applicable law, non-spouse beneficiary rollovers are mandatory for Plan Years beginning after December 31, 2009.

30. Pre-Tax Payment of \$3,000 in Qualified Health Insurance Premiums for Eligible Retired Public Safety Officers. The Plan X does /  does not (*check one*) permit Participants who are “eligible retired public safety officers” (as defined in Code section 402(l)(4)(B)) to pay up to \$3,000 in “qualified health insurance premiums” (as defined in Code section 402(l)(4)(D)) for the “eligible retired public safety officers”, their spouses, or their dependents. This provision is effective as of (*check one*):

- January 1, 2007
- January 1, 2008
- X Other (*please specify a date no earlier than January 1, 2007*):

February 1, 2021

31. Spousal Consent and Default Beneficiary.

- (a) The Plan  does / X does not (*check one*) require spousal consent for plan distributions of any kind (including loans) in a form other than a joint and survivor annuity.
- (b) The Plan  does / X does not (*check one*) require spousal consent for designating a Beneficiary other than a spouse.
- (c) If no Beneficiary is designated by a Participant, the Participant’s default beneficiary will be the Participant’s X surviving spouse (if married or estate if unmarried) /  estate (if married or unmarried) (*check one*).
- (d) If spousal consent is required pursuant to Item 31(a) or (b), spousal consent must be (*check all that apply*):
  - Witnessed by  notary public /  Plan Administrator (*check all that apply*).
  - Irrevocable
  - If spousal consent applies under Item 31(b), spousal consent is required in order to designate any beneficiary  other than the spouse /  other than the spouse who separately or combined with

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other beneficiaries will receive more than 1/2 of the benefits to be paid (*check one*).

- Other (*please specify*):
- 

- (e) Effective June 26, 2013 through September 15, 2013, for Plan purposes, the term “spouse” or “surviving spouse” will include the same-sex spouse of an individual only if (*check one*):

- X The individual’s marriage is validly entered into in a state whose laws authorize the marriage of two individuals of the same sex at that time, even if the individuals are domiciled in a state that does not recognize the validity of same-sex marriages.
- The individual is domiciled in a state that recognizes same-sex marriages at that time.

Note: The determination of whether an individual is a person’s spouse or surviving spouse at any applicable time is made under procedures adopted by the Plan Administrator. Employers should review the impact of Federal and state laws on spousal beneficiary designations with independent legal counsel.

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<b>Part X Rollover Contributions</b>
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32. Pre-Tax and Roth Rollover Contributions.

(a) The Plan X will /  will not (*check one*) accept pre-tax rollover contributions from another eligible plan. If pre-tax rollover contributions are accepted in the Plan, the pre-tax rollover contributions from the following types of eligible retirement plan shall be accepted by the Plan (*check one*):

- All eligible retirement plans as defined in Code section 402(c)(8)(B).
- Only governmental Code section 457(b) plans.
- X Other (*please specify*):

401(a), 401(k), 403(a), 403(b), 457 Plans and traditional IRAs

(b) The Plan  will / X will not (*check one*) accept Roth rollover contributions from another eligible plan. If Roth rollover contributions are accepted by the Plan, the Roth rollover contributions from the following types of eligible retirement plan shall be accepted by the Plan (*check one*):

- All eligible retirement plans as defined in Code section 402(c)(8)(B) that maintain a Roth contribution account pursuant to Code section 402A.
- Only governmental Code section 457(b) plans that maintain a Roth contribution account pursuant to Code section 402A.
- Other (*please specify*):

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Note: Roth rollover contributions are only permitted if the Plan permits Roth elective deferral contributions. Roth rollover contributions shall be eligible for distribution at the same time as pre-tax rollover contributions.

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- (c) The following individuals are eligible to make rollover contributions (*check one*):
- Option #1: All Plan Participants (including former Employees with balances in the Plan and Employees not currently eligible to contribute to the Plan) and surviving spouse Beneficiaries.
  - Option #2: All Plan Participants (including former Employees with balances in the Plan and Employees not currently eligible to contribute to the Plan).
  - Option #3: Only Plan Participants who are otherwise eligible to contribute to the Plan because they are eligible employees described in Item 5 at the time they elect to make a rollover contribution.

33. In-Plan Roth Rollovers.

- (a) The Plan  does /  does not (*check one*) permit in-plan Roth rollovers (*i.e.*, the conversion of eligible pre-tax funds held in the Plan into Roth after-tax contributions inside the Plan) to the extent permitted under applicable Internal Revenue Service guidance. This provision is effective on and after \_\_\_\_\_ (*indicate a date on or after January 1, 2011*).

Note: Roth elective deferral contributions must be permitted under the Plan to permit in-plan Roth rollovers.

- (b) The following individuals are eligible to make in-plan Roth rollovers (*check one*):
- Option #1: All Plan Participants (including former Employees with balances in the Plan and Employees not currently eligible to contribute to the Plan) and surviving spouse Beneficiaries (*check only if Option #1 in Item 32(c) is checked*).
  - Option #2: All Plan Participants (including former Employees with balances in the Plan and Employees not currently eligible to contribute to the Plan) (*check only if Option #1 or #2 in Item 32(c) is checked*).

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- Option #3: Only Plan Participants who are otherwise eligible to contribute to the Plan because they are eligible employees described in Item 5 at the time they elect to make a rollover contribution (*check only if Option #1, #2, or #3 in Item 32(c) is checked*).
- (c) Regardless of the election made in Item 33(a), the Plan  will / X will not (*check one*) permit in-plan Roth rollovers (*i.e.*, the conversion of eligible pre-tax funds held in the Plan into Roth after-tax contributions inside the Plan) of amounts not otherwise distributable under the Internal Revenue Code to the extent permitted under applicable Internal Revenue Service guidance. This provision shall be effective for in-plan Roth rollovers made on and after \_\_\_\_\_ (*indicate a date on or after January 1, 2013*).

Note: Roth elective deferral contributions must be permitted under the Plan to permit in-plan Roth rollovers.

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<b>Part XI Custody of Assets</b>
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34. Exclusive Benefit Requirement of Code Section 457(g). The assets of the Plan shall be held for the exclusive benefit of Participants and their beneficiaries. The assets of the Plan shall be held in (*check one or more*):

- X A trust.
- Custodial accounts within the meaning of Code section 401(f).
- Annuity contracts within the meaning of Code section 401(f).

35. Trustee. If pursuant to Item 34, some or all assets of the Plan are to be held in a trust, the Trustee of the trust shall be (*check one*):

- Prudential Trust Company  
30 Scranton Office Park  
Scranton, PA 18507-1789
- X Prudential Bank & Trust, FSB  
280 Trumbull Street  
Hartford, CT 06013-3513
- Other: \_\_\_\_\_

Unless Prudential Trust Company or Prudential Bank & Trust, FSB is the Trustee, this Adoption Agreement shall not become applicable unless the Trustee or a qualified representative thereof approves and countersigns this Adoption Agreement.

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<b>Part XII Governing Law</b>
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36. Governing Law. The Plan shall be governed by the laws of (*check one*):

- New Jersey
- New York
- Pennsylvania
- Other (*please specify which state's laws shall govern the Plan*):

Texas



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<b>Signatures</b>
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By signing this Adoption Agreement the Employer hereby certifies that it (1) is a governmental entity described in Code section 457(e)(1)(A), (2) has received a copy of the Prudential Retirement Specimen Governmental 457(b) Plan, (3) accepts the terms and conditions of such Plan and any related services agreement between it and Prudential, (4) acknowledges that it has relied upon its own advisors regarding the completion of this Adoption Agreement, (5) understands or has been advised by its own legal and tax advisors of the legal and other tax implications of adopting the Plan, including, but not limited to, the requirements of Code section 457(b), (6) has had legal counsel review and revise the Plan and Adoption Agreement to ensure that the Plan and Adoption Agreement comply with all applicable state and local law requirements, and (7) understands and acknowledges that Prudential will be under no obligation to update this Adoption Agreement or the Prudential Retirement Specimen Governmental 457(b) Plan document for any subsequent changes in applicable law.

IN WITNESS WHEREOF, the Employer has caused this Adoption Agreement to be executed by a duly authorized representative this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Attest: \_\_\_\_\_  
Name of Political Subdivision

By: \_\_\_\_\_

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

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Acknowledged on behalf of Prudential Retirement, a business division of The Prudential Insurance Company of America in its role as recordkeeper for the Plan:

By: \_\_\_\_\_

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

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

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*If applicable:*

By signing this Adoption Agreement, the Trustee hereby acknowledges his or her role as Trustee pursuant to the terms of the Trust Agreement between the Employer and the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Adoption Agreement to be executed by a duly authorized representative this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Attest: \_\_\_\_\_  
Name of Trustee (if a Corporate Trustee)

By: \_\_\_\_\_

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

By: \_\_\_\_\_

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

By: \_\_\_\_\_

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

By: \_\_\_\_\_

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