

SAMPLE COMPANY, INC.

DEFINED BENEFIT PLAN

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DATE HERE



THIS AGREEMENT is made and entered into this [redacted] day of [redacted],
200 [redacted], between **SAMPLE COMPANY, INC.** (hereafter referred to as the "Sponsor") and **T. RUSTEE**
(hereafter referred to as the "Trustee").

WITNESSETH:

WHEREAS, the Sponsor originally established a defined benefit plan and trust (hereafter called the Plan), originally effective December 28, 1999, to provide retirement and other incidental benefits to Employees who are eligible to participate in the plan; and

WHEREAS, in accordance with the terms of the Plan, the Sponsor has the ability at any time, and from time to time, to amend the Plan;

NOW, THEREFORE, effective January 1, 2002 (except for those Sections of the Plan that have an alternative effective date), the Sponsor and the Trustee hereby amend and restate the Plan as follows to comply with all applicable statutes, including the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986, as amended by the Uruguay Round Agreements Act, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Uniform Services Employment and Reemployment Rights Act, the Internal Revenue Service Restructuring and Reform Act of 1998, the Community Renewal Tax Relief Act of 2000, and all applicable rulings and regulations issued thereunder:

ARTICLE 1 DEFINITIONS

1.1 ACCRUED BENEFIT: The term Accrued Benefit means the benefit amount earned by a Participant as of a specified date as determined under Section 4.1. A Participant's Accrued Benefit in a given year will never be less than the Actuarial Equivalent of his or her Accrued Benefit as of the end of the prior Plan Year except as otherwise permitted by law or applicable regulation or ruling. A Participant who completes a Year of Benefit Service will be entitled to accrue a benefit for that Plan Year even if he or she terminates employment before the end of the Plan Year.

A Participant's Accrued Benefit will be reduced by the Actuarial Equivalent of any Plan benefits previously paid. A Participant's Accrued Benefit will also be reduced by the Actuarial Equivalent of any vested benefit entitlement from any other defined benefit plan sponsored or contributed to by the Employer, but only to the extent such plan benefits are attributable to concurrent Years of Service which are counted for purposes of determining a Year of Benefit Service under this Plan.

Benefit accruals will be made under this paragraph only to the extent necessary to insure that the Plan for any Plan Year satisfies one of the tests set forth in either Code §410(b)(1)(A) (in which the Plan initially fails to benefit at least 70% of Non-Highly Compensated Employees), or Code §§410(b)(1)(B) (in which the Plan initially fails to benefit a percentage of Non-Highly Compensated Employees that is at least 70% of the percentage of Highly Compensated Employees who benefit under the Plan), or fails to satisfy Code §401(a)(26) (in which the Plan initially fails to benefit at least the lesser of 50 Employees or 40% of all Employees). In such event in order to satisfy such test(s) for any Plan Year affected, a benefit may be accrued for certain Employees in (a), (b), (c), and (d) as follows:

- (a) **First Accrual:** First, a benefit may accrue to that group of Employees who were Participants for the Plan Year but did not receive an accrual for the Plan Year, then
- (b) **Second Accrual:** Next, a benefit may accrue to that group of Employees who have not yet satisfied the eligibility requirements of Section 2.1(a) and are not members of any ineligible class of Employee as set forth in Section 2.1(b), then
- (c) **Third Accrual:** Next, a benefit may accrue to that group of Employees who have satisfied the eligibility requirements of Section 2.1(a) except that they are members of any ineligible class of Employee as set forth in Section 2.1(b), and then
- (d) **Fourth Accrual:** Finally, a benefit may accrue to that group of Employees who have not yet satisfied the eligibility requirements of Section 2.1(a) and are members of any ineligible class of Employee as set forth in Section 2.1(b).

Only those Employees who are required to benefit under the Plan for the Plan Year to satisfy the above tests shall be entitled to an accrual. To determine each Employee's priority within each group for this purpose, individuals will be ranked by Hours of Service during the Plan Year with the highest number first, beginning first by including only those who were Employees on the last day of the Plan Year. Then if necessary, individuals will be ranked as follows: by Hours of Service during the Plan Year with the highest number first beginning with those Employees who completed at least 500 Hours of Service during the Plan Year.

1.2 ACTUARIAL EQUIVALENT (EQUIVALENCE): The term Actuarial Equivalent or Actuarial Equivalence means a benefit having the same value as another stated benefit on the date payment commences or on any other date calculated on the basis of the factors as applicable below.

- (a) **Adjustment For Form And Date Of Payment:** If a Participant's Accrued Benefit is payable in a form other than the Normal Form of Retirement Benefit it will be adjusted to reflect the Actuarial Equivalent thereof.

If the Normal Form of Retirement Benefit is a Qualified Joint and Survivor Annuity, the determination of such Actuarial Equivalent adjustments shall be calculated on the basis that the Normal Form of Retirement Benefit is a monthly straight life annuity payable in equal installments for the life of the Participant if the Participant is not married on the Annuity Starting Date; and subject to the limitations of Article 6, on the basis that the Normal Form of Retirement Benefit is a Qualified Joint and Survivor Annuity if the Participant is married on the Annuity Starting Date and is otherwise entitled to a Normal Form of Retirement Benefit as a Qualified Joint and Survivor Annuity.

If a Participant's Accrued Benefit is payable at any time after the Participant's Normal Retirement Date, it will be determined in accordance with Section 4.3. If a Participant's Accrued Benefit is payable at any time prior to the Participant's Normal Retirement Date, it will be adjusted to reflect the Actuarial Equivalent of the Normal Form of Retirement Benefit commencing at Normal Retirement Date.

- (b) **Age On Applicable Date:** The Actuarial Equivalent of an Accrued Benefit will be determined as of the applicable date on the basis of the payee's actual Age (or nearest age in years, or age in years and months, consistently determined by the Administrator). If a benefit is initially determined and thereafter there is an administrative delay in the actual payment of benefits, the Administrator shall determine in a manner consistently applied on a nondiscriminatory basis whether or not the benefit will be adjusted. Any such adjustment may either add interest to the date of actual distribution or the benefit may be revalued based on the payee's then current actual Age (or nearest age in years, or age in years and months, consistently determined by the Administrator) as of the date benefits are paid.
- (c) **Amendment Of Actuarial Equivalence:** Except as may otherwise be permitted by the Code and by the regulations issued thereunder, if the definition of Actuarial Equivalence is amended, in no event will the lump sum Actuarial Equivalent of an Accrued Benefit determined on the date a benefit commences be less than the Actuarially Equivalent value of the Accrued Benefit as determined one day prior to the date of change, based on the terms of the Plan as in effect on such day.
- (d) **Actuarial Equivalence Factors:** Actuarial Equivalence will be determined on the basis of the following mortality table and interest rates: Pre-retirement: 5% interest. Post-retirement: 5% interest and the 1983 Individual Annuity (Female) Mortality Table.

Notwithstanding the preceding, for purposes of determining the amount of a distribution payable under either (1), (2), or (3) following, if it produces a greater benefit then Actuarial Equivalence will be determined on the basis of the applicable mortality table and applicable interest rate under Code Section §417(e) as in (f) below:

- (1) as a cash-out under Section 5.6 or in the form of a lump sum or installments if permitted in Section 5.1(b), or

- (2) in a form other than an annual benefit that is non-decreasing for the life of the Participant or in the case of a Qualified Pre-Retirement Survivor Annuity, the life of the Participant's Spouse, or
 - (3) in a form that decreases during the life of the Participant merely because of the death of the surviving annuitant (but only if the reduction is to a level not below 50% of the annual benefit payable before the death of the surviving annuitant) or merely because of the cessation or reduction of Social Security supplements or qualified disability payments.
- (e) **Code §417(e) PBGC Factors:** Not applicable for this Plan.
- (f) **Code §417(e) GATT Factors:** The applicable interest rate is the rate of interest on 30 year Treasury securities as specified by the Commissioner for the applicable lookback month for the applicable stability period. The applicable lookback month shall be the fifth calendar month preceding the first day of the applicable stability period. The applicable stability period shall be the successive period of one Plan Year that contains the Annuity Starting Date for the distribution and for which the applicable interest rate remains constant. However, if the date set forth herein for determining the applicable interest rate is changed by Plan amendment or by indirect change as a result of a change in the Plan Year, such change shall not be given effect with respect to any distribution during the period commencing one year after the later of the amendment's effective date or adoption date, if during such period the Participant's distribution would be reduced as a result of such amendment.

The post-retirement (and pre-retirement, if applicable) applicable GATT mortality table will be as follows: 1) for benefits with an Annuity Starting Date before December 31, 2002 as set forth in Internal Revenue Service Rev. Rul. 95-6 equal to the 1983 Group Annuity Mortality Table gender neutral blended 50/50 Male and Female; and 2) for benefits with an Annuity Starting Date on or after December 31, 2002 as set forth in Internal Revenue Service Rev. Rul. 2001-62 equal to the 1994 Group Annuity Reserving Mortality Table projected to 2002 based on a fixed blend of 50% of the unloaded Male mortality rates and 50% of the Female mortality rates.

1.3 ADMINISTRATOR: The term Administrator means the Sponsor unless another Administrator is appointed by the Sponsor.

1.4 ADOPTING EMPLOYER: The term Adopting Employer means any business which adopts this Plan with the consent of the Sponsor. An Employee's transfer to or from any Employer or Adopting Employer will not affect his or her Accrued Benefit, Years of Service, Periods of Service, Years of Benefit Service, and Years of Service or Periods of Service or Years of Benefit Service as a Plan Participant. All Adopting Employers will be subject to the following provisions:

- (a) **Multiple Employer Plan Provisions Under Code §413(c):** Notwithstanding any other provision in the Plan to the contrary, unless the Plan is a collectively bargained plan described in Regulation §1.413-1(a), the following provisions will apply with respect to any Adopting Employer that is not an Affiliated Employer of the Sponsor:
 - (1) **Instances Of Separate Employer Testing:** Employees of any such Adopting Employer will be treated separately for purposes of testing under the provisions of Code §401(a)(4), Code §401(a)(26), Code §401(k), Code §401(m) and, if the

Sponsor and the Adopting Employer do not share Employees, Code §416. Furthermore, the terms of Code §410(b) will be applied separately on an employer-by-employer basis by the Sponsor (and the Adopting Employers which are part of the Affiliated Group which includes the Sponsor) and each Adopting Employer that is not an Affiliated Employer of the Sponsor, taking into account the generally applicable rules described in Code §401(a)(5), §414(b) and §414(c).

- (2) **Instances Of Single Employer Testing:** Employees of the Adopting Employer will be treated as part of a single employer plan for purposes of eligibility to participate under Article 2 and under the provisions of Code §410(a). Furthermore, the terms of Code §411 relating to Vesting will be applied as if all Employees of all such Adopting Employers and the Sponsor were employed by a single employer, except that the rules regarding Breaks in Service will be applied under such regulations as may be prescribed by the Secretary of Labor.
 - (3) **Common Trust:** Contributions made by any such Adopting Employer will be held in a common Trust Fund with contributions made by the Sponsor, and all such contributions will be available to pay the benefits of any Participant (or Beneficiary thereof) who is an Employee of the Sponsor or any such Adopting Employer.
 - (4) **Common Disqualification Provision:** The failure of either the Sponsor or any such Adopting Employer to satisfy the qualification requirements under the provisions of Code §401(a), as modified by the provisions of Code §413(c), will result in the disqualification of the Plan for all such Employers maintaining the Plan.
- (b) **Termination Of Adoption:** An Adopting Employer may terminate participation in the Plan by delivering written notice to the Sponsor, the Administrator and the Trustee; but in accordance with Article 9, only the Sponsor can terminate the Plan. If a request for and approval of a transfer of assets from this Plan to any successor qualified retirement plan maintained by the Adopting Employer or its successor is not made in accordance with Section 9.3, Participants who are no longer Employees because the Adopting Employer terminates its Plan participation will only be entitled to the commencement of their benefits (a) in the case of Participants who are no longer Employees of an Adopting Employer that is an Affiliated Employer of the Sponsor, in accordance with Article 5 after their death, retirement, Disability or Termination of Employment from the Adopting Employer or former Adopting Employer; and (b) in the case of Participants who are no longer Employees of an Adopting Employer that is not an Affiliated Employer of the Sponsor, within a reasonable time thereafter as if the Plan had been terminated under Section 9.2.

1.5 AFFILIATED EMPLOYER: The term Affiliated Employer means any of the following of which any Employer is a part: (1) a controlled group of corporations as defined in Code §414(b); (2) a trade or business (whether or not incorporated) under common control under Code §414(c); (3) any organization (whether or not incorporated) which is a member of an affiliated service group under Code §414(m); and (4) any other entity required to be aggregated under Code §414(o).

1.6 AGE: The term Age means an Employee's actual attained age.

1.7 ANNIVERSARY DATE: The term Anniversary Date means January 1st of each year.

1.8 ANNUITY STARTING DATE: The term Annuity Starting Date means the first day of the first period for which an amount is paid as an annuity, or, in the case of a benefit not payable as an annuity, the

first day all events have occurred which entitle the Participant to such benefit. The first day of the first period for which a benefit is to be received by reason of Disability will be treated as the Annuity Starting Date only if such benefit is not an auxiliary benefit.

- 1.9 AVERAGE COMPENSATION:** The term Average Compensation means the annual average of a Participant's Compensation averaged over the 3 highest consecutive Plan Years ending in the current Plan Year or in any prior Plan Year (or over the actual number of such consecutive years, if less) during which the Participant completed or was entitled to credit for completing a Year of Benefit Service, ending at the earlier of (a) the date the Participant ceased to be an active Participant in the Plan, (b) the last day the Participant qualifies for a Year of Benefit Service, or (c) the Participant's Normal Retirement Date unless Compensation is counted beyond such date in accordance with Section 4.3.
- 1.10 BENEFICIARY:** The term Beneficiary means the recipient designated by the Participant to receive the Plan benefits payable upon the Participant's death, or the recipient designated by a Beneficiary to receive any benefits which may be payable in the event of the Beneficiary's death prior to receiving the entire death benefit to which the Beneficiary is entitled. All such Beneficiary designations will be made in accordance with the following provisions:
- (a) **Beneficiary Designations By A Participant:** Subject to the provisions of Section 5.9 regarding the rights of a Participant's Spouse, each Participant may designate a Beneficiary on a form supplied by the Administrator, and may change or revoke that designation by filing written notice with the Administrator. If a Participant completes or has completed a Beneficiary designation form in which the Participant designates his or her Spouse as the Beneficiary, and the Participant and the Participant's Spouse are legally divorced subsequent to the date of such designation, then the designation of such Spouse as a Beneficiary hereunder will be deemed null and void unless the Participant, subsequent to the legal divorce, reaffirms the designation by completing a new Beneficiary designation form. In the absence of a written Beneficiary designation form, the Participant will be deemed to have designated the following Beneficiaries in the following order, provided however, that with respect to clauses (a) and (b), such Beneficiaries are then living: (a) the Participant's Spouse, (b) the Participant's issue per capita; and (c) the Participant's estate.
 - (b) **Beneficiary Designations By A Beneficiary:** In the absence of a Beneficiary designation or other directive from the deceased Participant to the contrary, any Beneficiary may name his or her own Beneficiary in accordance with Section 5.3(c) to receive any benefits which may be payable in the event of the Beneficiary's death prior to the receipt of all the Participant's death benefits to which the Beneficiary was entitled.
 - (c) **Order of Death:** If a Participant and his or her Spouse both die as a result of an event where it cannot be determined by the Administrator (or, at the Administrator's discretion, by a court of competent jurisdiction) within a reasonable time and with reasonable certainty based on the information or evidence presented to the Administrator which person died first, it will be presumed for purposes of any death benefits payable under the Plan that (1) if only one of the deceased persons was a Participant, that the person who was a Participant entitled to benefits hereunder shall be presumed to have died first, and (2) if each of the deceased persons was a Participant, it shall be presumed that the older person died first.

- (d) **Beneficiaries Considered Contingent Until Death Of Participant:** Notwithstanding any provision in this Section to the contrary, any Beneficiary named hereunder will be considered a contingent Beneficiary until the death of the Participant (or Beneficiary, as the case may be), and until such time will have no rights granted to Beneficiaries under the Plan.
- 1.11 BREAK IN SERVICE:** A Plan Year during which an Employee does not complete more than 500 Hours of Service. If a Plan Year is less than 12 months, if such Hours of Service requirement is larger than one (1) it will be proportionately reduced.
- 1.12 CODE:** The term Code means the Internal Revenue Code of 1986, as amended, and the regulations and rulings promulgated thereunder by the Internal Revenue Service.
- 1.13 CODE §3401 COMPENSATION:** The term Code §3401 Compensation means wages within the meaning of Code §3401(a) that are subject to income tax withholding at the source. Code §3401 Compensation must be determined without regard to any rules thereunder that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).
- 1.14 CODE §415 COMPENSATION:** The term Code §415 Compensation means Earned Income, wages, salaries, fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan, including, but not limited to, commissions paid salespersons, compensation for services based on a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a non-accountable plan as described in regulation §1.62-2(c). For Limitation Years beginning after December 31, 1991, Code §415 Compensation will include amounts paid or made available. Code §415 Compensation will be determined subject to the following provisions:
- (a) **Exclusion Of Certain Amounts:** Code §415 Compensation does not include (1) Employer contributions to a plan of deferred compensation which are not includible in gross income for the taxable year in which contributed, or Employer contributions to a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation; (2) amounts realized from a non-qualified stock option, or when restricted stock or property held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture; (3) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and (4) other amounts which receive special tax benefits, or contributions made by an Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Code §403(b) (whether or not the amounts are excludible from an Employee's gross income).
- (b) **Treatment Of Elective Deferrals And Certain Other Amounts:** For Limitation Years beginning on or after January 1, 1998, Code §415 Compensation paid or made available will also include any elective deferrals as defined in Code §402(g)(3), and amounts contributed or deferred at the election of the Employee which were not includible in gross income by reason of Code §125 or Code §457. In addition, Code §415 Compensation will also include elective amounts that are not includible in the gross income of the Employee by reason of Code §132(f)(4) for Limitation Years beginning on or after January 1, 2001 (or if elected by the Administrator on a non-discriminatory basis, any earlier Limitation Year beginning on or after January 1, 1998).

- 1.15 COMPENSATION:** The term Compensation means Code §415 Compensation that is actually paid in gross income during the Plan Years (or, for a Plan Year which began on or after January 1, 1992, actually paid or made available).
- (a) **Treatment of Partial Year Compensation:** If a Participant first completed an Hour of Service after the first calendar month of the first accounting period for determining Compensation or Average Compensation or failed to complete an Hour of Service during the last calendar month of any accounting period for determining Compensation or Average Compensation, Compensation for such accounting period shall be counted (without annualizing) if the Participant completed or was entitled to credit for completing a Year of Benefit Service which includes such period.
 - (b) **Treatment of Compensation Prior To Becoming A Participant:** Amounts earned prior to becoming a Plan Participant will be included in determining Compensation.
 - (c) **Code §401(a)(17) Limit:** Compensation for any Plan Year (12-month determination period) shall not exceed the Code §401(a)(17) Annual Compensation Limit. If a determination period consists of fewer than 12 months, the Code §401(a)(17) Annual Compensation Limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. If Compensation for any prior determination period is taken into account in determining a Participant's Plan benefits for the current Plan Year, the Compensation for such prior determination period is subject to the applicable Code §401(a)(17) Annual Compensation Limit as in effect for that prior period.
 - (d) **Compensation Of Owner-Employees Or Self-Employed Individuals:** Compensation of an Owner-Employee or a Self-Employed Individual will equal Earned Income up to the Code §401(a)(17) Annual Compensation Limit.
 - (e) **Compensation Limitation Election Available To Certain Participants:** Except for purposes of determining Minimum Top Heavy Benefits in Section 4.7 or Code §415 limitations of Article 6, any Participant who is a Key Employee, an Owner-Employee, a Self-Employed Individual, or a Highly Compensated Employee may elect for any Plan Year, on a form prescribed by the Administrator, to limit his or her Compensation for all purposes under this Plan.
- 1.16 DISABILITY:** The term Disability means a physical or mental condition arising after an Employee has become a Participant which totally and permanently prevents the Participant from performing his or her specified duties for the Employer. The determination as to whether a Participant has suffered a Disability will be made by a physician acceptable to the Administrator. However, notwithstanding the foregoing to the contrary, the term Disability for purposes of this Plan will not include any disability arising from chronic or excessive use of intoxicants or other substances; from an intentionally self-inflicted injury or sickness; from an unlawful act or enterprise by the Participant; or from military service if the Participant is eligible to receive a government sponsored military disability pension.
- 1.17 EARLY RETIREMENT AGE:** This Plan does not provide for an Early Retirement Age or Early Retirement Date. Except as otherwise provided in the Plan, a Participant shall not be eligible for any special retirement benefits upon retirement prior to the date the Participant reaches his or her Normal Retirement Age.

- 1.18 EARNED INCOME:** The term Earned Income means the net earnings from self-employment in the trade or business with respect to which the Plan is established, for which personal services of the individual are a material income-producing factor. Net earnings will be determined without regard to items not included in gross income and the deductions allocable thereto. Net earnings will be reduced by deductible contributions by the Employer to a qualified retirement plan. Net earnings will be determined with regard to the deduction allowed to the Employer by Code §164(f) for taxable years beginning after December 31, 1989.
- 1.19 EMPLOYEE:** The term Employee means (1) any person reported on the payroll records of the Employer as an employee who is deemed by the Employer to be a common law employee; (2) except for purposes of determining eligibility to participate in this Plan, any person reported on the payroll records of an Affiliated Employer of the Sponsor or an Adopting Employer as an employee who is deemed by the Affiliated Employer to be a common law employee, even if the Affiliated Employer is not an Adopting Employer; (3) any Self-Employed Individual who derives Earned Income from the Employer; (4) any Owner-Employee; and (5) any person who is considered a Leased Employee but who (i) is not covered by a plan described in Code §414(n)(5), or (ii) is covered by a plan described in Code §414(n)(5) but Leased Employees constitute more than 20% of the Employer's non-highly compensated workforce. However, the term Employee will not include any individual who is not reported on the payroll records of the Employer or an Affiliated Employer as a common law employee. If such person is later determined by the Sponsor or by a court or governmental agency to be an Employee or to have been an Employee, he or she will only be eligible for Plan participation prospectively and may participate in the Plan as of the next entry date in Section 2.2 following such determination and after the satisfaction of all other eligibility requirements.
- 1.20 EMPLOYER:** The term Employer means the Sponsor, any Adopting Employer, and any direct predecessor business entity of the Sponsor or an Adopting Employer which was or would have been considered an Affiliated Employer of the Sponsor or an Adopting Employer. Where applicable, such as determining Hours of Service, Periods of Service and Years of Service, the term Employer or Adopting Employer will also mean any business entity that was an Adopting Employer. As to any Employee, the term Employer at the time of reference means the employer of such Employee.
- 1.21 FIDUCIARY:** The term Fiduciary means any individual or entity which exercises any discretionary authority or control over the management of the Plan or over the disposition of the assets of the Plan; renders investment advice for a fee or other compensation (direct or indirect); or has any discretionary authority or responsibility over Plan administration; or acts to carry out a fiduciary responsibility, when designated by a named Fiduciary pursuant to authority granted by the Plan; subject, however, to any exception granted directly or indirectly by the provisions of ERISA or any applicable regulations. The Sponsor is the "named Fiduciary" for purposes of ERISA §402(a)(2).
- 1.22 FISCAL YEAR:** The term Fiscal Year means the Sponsor's accounting year beginning January 1st and ending the following December 31st.
- 1.23 FORM W-2 COMPENSATION:** The term Form W-2 Compensation means wages within the meaning of Code §3401(a) and all other payments of compensation actually paid or made available in gross income to an Employee by the Employer in the course of the Employer's trade or business for which the Employer is required to furnish the Employee a Form W-2 under Code §6041(d), §6051(a)(3) and §6052. Form W-2 Compensation must be determined without regard to any rules under Code §3401(a) limiting remuneration included in wages based on the nature or location of the employment or services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

1.24 HIGHLY COMPENSATED EMPLOYEE (HCE): The term Highly Compensated Employee or HCE means, for Plan Years beginning after December 31, 1996, any Employee who during the Plan Year or the look-back year was a 5% owner as defined in Code §416(i)(1), or who for the look-back year had Code §415 Compensation in excess of \$80,000 as adjusted in accordance with Code §415(d) (except that the base year will be the calendar quarter ending September 30, 1996).

In determining who is a former Highly Compensated Employee, the rules for determining which Employees are Highly Compensated Employees for the Plan Year or look-back year for which the determination is being made (in accordance with temporary regulation §1.414(q)-1T, A-4 and Notice 97-45) will be applied. A former Highly Compensated Employee for the determination year is any former Employee who, with respect to the Employer, had a separation year (as defined in temporary regulation §1.414(q)-1T, A-5) prior to the determination year and was an active Highly Compensated Employee for either such Employee's separation year or any determination year ending on or after the Employee's 55th birthday. For purposes of determining status as a former Highly Compensated Employee, whether an employee was an active Highly Compensated Employee for a determination year that ended on or after the Employee's 55th birthday, or that was a separation year, is based on the rules applicable to determining HCE status as in effect for that determination year.

In determining if an Employee is a Highly Compensated Employee for Plan Years beginning in 1997, the amendments to Code §414(q) are deemed to have been in effect for Plan Years beginning in 1996. If the Employer maintains more than one qualified retirement plan, the terms of this Section will be applied in a consistent manner in all such plans.

If the Employer maintains more than one qualified retirement plan, the definition of Highly Compensated Employee must be consistently applied to all such plans.

- (a) **Determination Of Look-Back Year:** The look-back year will be the 12 month period immediately preceding the Plan Year for which the determination is being made.
- (b) **Top Paid Group Election:** In determining if an Employee is a Highly Compensated Employee based on Code §415 Compensation, the top paid group election set forth in Code §414(q)(3) is not being applied for any Plan Year beginning on or after January 1, 1997.

1.25 HOUR OF SERVICE: The term Hour of Service means, with respect to any provision in which service is determined by reference to an Employee's Periods of Service, each hour for which an Employee is paid, or is entitled to payment, by the Employer or an Affiliated Employer for the performance of duties. With respect to any provision in which service is determined by reference to an Employee's Years of Service, the term Hours of Service means the following:

- (a) **Determination Of Hours:** The term Hour of Service means (1) each hour an Employee is paid, or entitled to payment, for the performance of duties for the Employer or an Affiliated Employer, which will be credited to the Employee for the computation period in which the duties are performed; (2) each hour for which an Employee is paid, or entitled to payment, by the Employer or an Affiliated Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence, except that no more than 501 hours will be credited under this clause (2) for any single continuous period (whether or not such period occurs in a single computation period); and (3) each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer or an Affiliated Employer, except that the same hours will not be credited both under clause (1) or clause (2) and under this

clause (3), and these hours will be credited for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made. Hours of Service will be calculated and credited pursuant to DOL regulation 2530.200b-2(b) and (c), which are incorporated herein by reference.

- (b) **Maternity/Paternity Leave:** In determining if a Break in Service for participation and vesting has occurred in a computation period, an individual on Maternity or Paternity Leave will receive credit for up to 501 hours which would otherwise have been credited but for such absence, or in any case in which such hours cannot be determined, 8 hours per day of such absence. Hours credited for Maternity or Paternity Leave will be credited in the computation period in which the absence begins if the crediting is necessary to prevent a Break in Service in that period, or in all other cases, in the following computation period.
- (c) **Use Of Equivalencies:** Notwithstanding paragraph (a), the Administrator may elect for all Employees or for one or more different classifications of Employees (provided such classifications are reasonable and are consistently applied) to apply one or more of the following equivalency methods in determining the Hours of Service of an Employee paid on an hourly or salaried basis. Under such equivalency methods, an Employee will be credited with either (1) 190 Hours of Service for each month in which he or she is paid or entitled to payment for at least one Hour of Service; or (2) 95 Hours of Service for each semi-monthly period in which he or she is paid or entitled to payment for at least one Hour of Service; or (3) 45 Hours of Service for each week in which he or she is paid or entitled to payment for at least one Hour of Service; or (4) 10 Hours of Service for each day in which he or she is paid or entitled to payment for at least one Hour of Service.

1.26 KEY EMPLOYEE: The term Key Employee means any Employee, Former Employee, deceased Employee, or Beneficiary who at any time during the Plan Year containing the Determination Date for the Plan Year in question or any of the prior 4 Plan Years was one of the following:

- (a) **Officers:** An officer of the Employer whose Code §415 Compensation exceeds 50% of the amount in effect under Code §415(b)(1)(A), except that no more than fifty Employees (or, if lesser, the greater of three or 10% of the Employees) will be treated as officers.
- (b) **Owners:** An owner (or was considered an owner under Code §318) of one of the ten largest interests in the Employer whose Code §415 Compensation exceeds 100% of the dollar limitation in effect under Code §415(c)(1)(A), but if two Employees own the same interest in the Employer, the Employee with the greater annual Code §415 Compensation will be treated as owning a larger interest; or a 5% owner of the Employer as defined in Code §416(i)(1)(B)(i); or a 1% owner of the Employer as defined in Code §416(i)(1)(B)(ii) whose annual Code §415 Compensation is more than \$150,000.

1.27 LEASED EMPLOYEE: The term Leased Employee means, for Plan Years beginning on or after January 1, 1997, any person within the meaning of Code §414(n)(2) and Code §414(o) who is not reported on the payroll records of the Employer as a common law employee and who provides services to the recipient Employer if (a) the services are provided under an agreement between the Employer and a leasing organization; (b) the person has performed services for the Employer or for the Employer and related persons as determined under Code §414(n)(6) on a substantially full time basis for a period of at least one year; and (c) the services are performed under the primary direction and control of the Employer. Contributions or benefits provided to a Leased Employee by the leasing organization which are attributable to services performed for the Employer will be treated as provided by the Employer. A Leased Employee shall not be considered an Employee of the recipient

Employer if such Employee is covered by a money purchase pension plan providing (a) a non-integrated Employer contribution rate of at least 10% of Compensation (as defined in Code §415(c)(3)), but including amounts contributed by the Employer pursuant to a salary reduction agreement which are excludible from the Employee's gross income under a cafeteria plan covered by Code §125, for qualified transportation fringe benefits under Code §132(f)(4), a cash or deferred plan under Code §401(k), a Simplified Employee Pension Plan under Code §408(k), or a tax-deferred annuity under Code §403(b); (b) immediate participation; and (c) full and immediate vesting. This exclusion is only available if Leased Employees do not constitute more than twenty percent (20%) of the recipient's non-highly compensated work force.

- 1.28 LIMITATION YEAR:** The term Limitation Year means the Plan Year.
- 1.29 MATERNITY OR PATERNITY LEAVE:** The term Maternity or Paternity Leave means that an Employee is absent from work because of the Employee's pregnancy; the birth of the Employee's child; the placement of a child with the Employee in connection with the adoption of such child by the Employee; or the need to care for such child for a period beginning immediately following the child's birth or placement as set forth above.
- 1.30 NON-HIGHLY COMPENSATED EMPLOYEE or NHCE:** The term Non-Highly Compensated Employee means any Employee who is not a Highly Compensated Employee.
- 1.31 NON-KEY EMPLOYEE:** The term Non-Key Employee means any Employee who is not a Key Employee, including former Key Employees. For purposes of determining benefits under Section 4.7, Non-Key Employee means a Non-Key Employee who either is a Participant or would be a Participant but for the reasons set forth in Section 4.7.
- 1.32 NORMAL FORM OF RETIREMENT BENEFIT:** The term Normal Form of Retirement Benefit means a monthly annuity payable as a Qualified Joint and Survivor Annuity for the life of the Participant with a survivor benefit payable after the death of the Participant for the life of the Participant's Spouse which is equal to 100% of the monthly annuity payable during the life of the Participant.
- 1.33 NORMAL RETIREMENT AGE:** The term Normal Retirement Age means the later of the date a Participant reaches Age 60 or the fifth (5th) anniversary of the date he or she entered the Plan as a Participant. There is no mandatory retirement Age.
- 1.34 NORMAL RETIREMENT DATE:** The term Normal Retirement Date means the first day of the month coinciding with or next following the date a Participant reaches Normal Retirement Age.
- 1.35 OWNER-EMPLOYEE:** The term Owner-Employee means (1) in the case of an Employer or Affiliated Employer which is an unincorporated trade or business, an individual who owns the entire interest in such Employer or Affiliated Employer; and (2) in the case of an Employer or Affiliated Employer which is a partnership, an individual who owns more than 10% of either the capital interest or the profit interest in such Employer or Affiliated Employer.
- 1.36 PARTICIPANT:** The term Participant means any Employee who has met the eligibility and participation requirements of the Plan. However, an individual who is no longer an Employee will not be deemed a Participant if his or her entire Plan benefit (1) is fully guaranteed by an insurance company and are legally enforceable at the sole choice of such individual against such insurance company, provided that a contract, Policy, or certificate describing the benefits to which such individual is entitled under the Plan has been issued to such individual; or (2) is paid in a lump sum distribution or other form which represents such individual's entire interest in the Plan.

- 1.37 PERIOD OF SERVICE:** Not applicable.
- 1.38 PERIOD OF SEVERANCE:** Not applicable.
- 1.39 PERMISSIVE AGGREGATION GROUP:** The term Permissive Aggregation Group means a Required Aggregation Group plus any other Employer plan(s) which when considered as a group with the Required Aggregation Group would continue to satisfy Code §401(a)(4) and §410.
- 1.40 PLAN:** The term Plan means this defined benefit plan and trust agreement, which is named the Sample Company, Inc. Defined Benefit Plan.
- 1.41 PLAN YEAR:** The term Plan Year means the Plan's accounting year beginning January 1st and ending the following December 31st.
- 1.42 POLICY:** The term Policy means a life insurance policy or annuity contract purchased pursuant to the provisions of Section 7.13 of the Plan.
- 1.43 QUALIFIED JOINT AND SURVIVOR ANNUITY (or QJSA):** The term Qualified Joint and Survivor Annuity (or QJSA) means an immediate annuity payable for the life of the Participant with a survivor benefit payable for the life of the Participant's Spouse (a) which is not less than 50% nor more than 100% of the annuity payable during the joint lives of the Participant and the Participant's Spouse; (b) which is the Actuarial Equivalent of the Participant's Normal Form of Retirement Benefit unless the Normal Form of Retirement Benefit is a Qualified Joint and Survivor Annuity. If the Normal Form of Retirement Benefit is not a QJSA, the survivor benefit will be 50% unless a higher percentage is elected by the Participant; and (c) which is at least as valuable as the Actuarial Equivalent of any other Optional Form of Distribution payable under Article 5.
- 1.44 QUALIFIED PRE-RETIREMENT SURVIVOR ANNUITY (or QPSA):** The term Qualified Pre-Retirement Survivor Annuity (or QPSA) means a survivor annuity for the life of a deceased Participant's surviving Spouse which is equal to (a) the same benefit that would be payable if the Participant had retired with an immediate Qualified Joint and Survivor Annuity on the day before the Participant's date of death, or (b) if the Participant dies before the Earliest Retirement Age (as defined in Section 8.11), the same benefit that would be payable if the Participant had (1) terminated employment on the date of death, (2) survived to the Earliest Retirement Age, (3) retired with an immediate Qualified Joint and Survivor Annuity at the Earliest Retirement Age, and (4) died on the day after the Earliest Retirement Age.
- 1.45 REQUIRED AGGREGATION GROUP:** The term Required Aggregation Group means (a) each qualified deferred compensation Plan of the Employer in which at least one Key Employee participates or participated at any time during the determination period (regardless of whether the plan has terminated), and (b) any other qualified deferred compensation plan of the Employer which enables a plan described in (a) to satisfy Code §401(a)(4) or §410.
- 1.46 REQUIRED BEGINNING DATE:** The term Required Beginning Date means for a Participant who is not a 5% owner, April 1st of the calendar year following the later of the calendar year in which the Participant reaches Age 70½ or the calendar year in which the Participant actually retires; and for a Participant who is a 5% owner, April 1st of the calendar year following the calendar year in which the Participant reaches Age 70½. A Participant will be treated as a 5% owner hereunder if such Participant is a 5% owner as defined in Code §416 at any time during the Plan Year ending with or within the calendar year in which such owner reaches Age 70½. Once distributions have begun to

a 5% owner under this Section, they must continue to be distributed, even if the Participant ceases to be a 5% owner in a subsequent year.

- (a) **Effect Of Attainment of Age 70½:** Notwithstanding the above, except with respect to a 5% owner, a Participant's Accrued Benefit shall be actuarially increased to take into account the period after Age 70½ in which the Participant does not receive any benefits under the Plan. The Participant shall be entitled to a minimum of the Actuarial Equivalent of the Participant's Accrued Benefit as determined as of the April 1 following the calendar year in which the Participant attains Age 70½ (January 1, 1997 in the case of a Participant who attained Age 70½ prior to 1996), and ending on the date on which benefits commence after retirement in an amount sufficient to satisfy Code §401(a)(9).

The amount of actuarial increase payable as of the end of the period for actuarial increases must be no less than the Actuarial Equivalent of the Participant's retirement benefits that would have been payable as of the date the actuarial increase must commence plus the Actuarial Equivalent of additional benefits accrued after that date, reduced by the Actuarial Equivalent of any distributions made after that date. The actuarial increase is generally the same as, and not in addition to, the actuarial increase required for that same period under Code §411 to reflect the delay in payments after normal retirement, except that the actuarial increase required under Code §401(a)(9)(C) must be provided even during the period during which an employee is in Code §203(a)(3)(B) service.

For purposes of Code §411(b)(1)(H), the actuarial increase will be treated as an adjustment attributable to the delay in distribution of benefits after the attainment of Normal Retirement Age. Accordingly, to the extent permitted under Code §411(b)(1)(H), the actuarial increase required under Code §401(a)(9)(C)(iii) may reduce the benefit accrual otherwise required under Code §411(b)(1)(H)(i), except that the rules on the suspension of benefits are not applicable.

- 1.47 ROLLOVER ACCOUNT:** The term Rollover Account means the account to which a Participant's Rollover Contributions (if permitted under Section 3.4) are allocated. A Participant will at all times have a 100% Vested Interest in all amounts credited to his or her Rollover Account.
- 1.48 ROLLOVER CONTRIBUTION:** The term Rollover Contribution means an amount transferred to this Plan (a) in a trustee to trustee transfer from another qualified plan; (b) from another qualified plan as a lump sum distribution eligible for tax free rollover treatment and which is transferred by the Participant to this Plan within 60 days following his receipt thereof; (c) from a conduit individual retirement account if the only assets therein were previously distributed to the Participant by another qualified plan as a lump sum distribution eligible for a tax free rollover within 60 days of receipt thereof and earnings on said assets; or (d) from a conduit individual retirement account meeting the requirements of (a) above and transferred to this Plan within 60 days of receipt thereof. Any amount which is transferred to this Plan from another qualified retirement plan which at the time of transfer was not subject to the joint and survivor annuity and pre-retirement survivor annuity requirements of Code §401(a)(11), or which is transferred from a conduit individual retirement account, will not at any time be subject to the spousal consent requirements as set forth in Section 5.9.
- 1.49 SELF-EMPLOYED INDIVIDUAL:** The term Self-Employed Individual means anyone who owns an interest (other than stock) in the Employer and has Earned Income for the Plan Year or who would have had Earned Income but for the fact the Employer had no net profits for the Plan Year.

- 1.50 SHAREHOLDER-EMPLOYEE:** The term Shareholder-Employee means, in the case of an Employer or Affiliated Employer which is an electing small business corporation, an individual who is an employee or officer of such electing small business corporation and owns, or is considered as owning within the meaning of Code §318(a)(1), on any day during the taxable year of such corporation, more than 5% of the outstanding stock of the corporation.
- 1.51 SOCIAL SECURITY RETIREMENT AGE:** The term Social Security Retirement Age means Age 65 if the Participant reaches Age 62 before January 1, 2000 (i.e., was born before January 1, 1938); Age 66 if the Participant reaches Age 62 after December 31, 1999, but before January 1, 2017 (i.e., was born after December 31, 1937, but before January 1, 1955); and Age 67 if the Participant reaches Age 62 after December 31, 2016 (i.e., was born after December 31, 1954).
- 1.52 SPOUSE:** The term Spouse means the person to whom a Participant is legally married.
- 1.53 SPONSOR:** The term Sponsor means Sample Company, Inc. (and any successor thereto that elects to assume sponsorship of this Plan).
- 1.54 SUPER TOP HEAVY:** The term Super Top Heavy means the Top Heavy Ratio exceeds 90%.
- 1.55 TERMINATION OF EMPLOYMENT:** The term Termination of Employment means that a Participant has ceased to be an Employee for reasons other than retirement, death, or Disability.
- 1.56 TERMINATED PARTICIPANT:** The term Terminated Participant means a Participant who has ceased to be an Employee for reasons other than retirement, death or Disability.
- 1.57 TOP HEAVY:** The term Top Heavy means for any Plan Year beginning after December 31, 1983 that (a) the Top Heavy Ratio exceeds 60% and the Plan is not part of a Required Aggregation Group or Permissive Aggregation Group; or (b) the Plan is a part of a Required Aggregation Group but not a Permissive Aggregation Group and the Top Heavy Ratio for the group exceeds 60%; or (c) the Plan is a part of a Required Aggregation Group and a Permissive Aggregation Group and the Top Heavy Ratio for the Permissive Aggregation Group exceeds 60%.
- 1.58 TOP HEAVY MINIMUM BENEFIT:** See Section 4.7.
- 1.59 TOP HEAVY RATIO:** In determining if this Plan is Top Heavy or Super Top Heavy, the Top Heavy Ratio will be determined in accordance with the following provisions:
- (a) **Rule 1:** If the Employer maintains one or more defined benefit plans and has not maintained a defined contribution plan (including a SEP) which during the 5-year period ending on the Determination Date has or has had account balances, the Top Heavy Ratio for this Plan alone or for the Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of the Present Value of Accrued Benefits of all Key Employees as of the Determination Date (including any part of any Accrued Benefit distributed in the 5-year period ending on the Determination Date), and the denominator of which is the sum of the Present Value of Accrued Benefits for all Participants (including any part of any accrued benefits distributed in the 5-year period ending on the Determination Date), determined in accordance with Code §416 and the regulations thereunder.
 - (b) **Rule 2:** If the Employer maintains one or more defined benefit plans and maintains or has maintained one or more defined contribution plans (including any SEP) which during the 5-year period ending on the Determination Date has or has had any account balances, the Top

Heavy Ratio for any Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of the Present Value of Accrued Benefits under the aggregated defined benefit plan or plans for all Key Employees, determined in accordance with (a) above, and the sum of account balances under the aggregated defined contribution plan or plans for all Key Employees as of the Determination Date, and the denominator of which is the sum of the Present Value of Accrued Benefits under the defined benefit plan or plans for all Participants, determined in accordance with (a) above, and the account balances under the aggregated defined contribution plan or plans for all Participants as of the Determination Date, all determined in accordance with Code §416 and the regulations thereunder. The account balances under a defined contribution in both the numerator and denominator of the Top Heavy Ratio are increased for any distribution of an account balance made in the 5-year period ending on the determination date.

- (c) **Rule 3:** For purposes of paragraphs (a) and (b), the value of account balances will be determined as of the last day of the Plan Year and the Actuarial Equivalent of Accrued Benefits will be determined as of the most recent date for actuarially determining the required Employer contributions that falls within or ends with the 12-month period ending on the Determination Date, except as provided in Code §416 and the regulations thereunder for the first and second Plan Years of a defined benefit plan. The account balances and Accrued Benefits will be disregarded for a Participant (1) who is not a Key Employee but who was a Key Employee in a prior year or (2) who has not been credited with at least one Hour of Service with any Employer maintaining the Plan at any time during the 5-year period ending on the Determination Date. The calculation of the Top Heavy Ratio and the extent to which distributions, rollovers, and transfers are taken into account will be made under Code §416. When aggregating plans, the value of the account balances and Accrued Benefits will be calculated with reference to the Determination Dates that fall within the same calendar year. The Accrued Benefit of a Participant other than a Key Employee will be determined under (1) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (2) effective as of the first Plan Year beginning after December 31, 1986, if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under Code §411(b)(1)(C).
- (d) **Definition Of Determination Date:** In determining the Top Heavy Ratio, the term Determination Date means the last day of the preceding Plan Year except for the first Plan Year when Determination Date means the last day of such first Plan Year.
- 1.60 TRUSTEE:** The term Trustee means the persons or entity named as trustee or trustees in this Plan and any successor to such Trustee or Trustees.
- 1.61 TRUST FUND:** The term Trust Fund or Trust means the assets of the Plan.
- 1.62 VALUATION DATE:** Except as otherwise provided regarding the Top Heavy Ratio, the term Valuation Date means the date on which the Trustee determines the value of the assets of the Trust Fund, which must occur annually on the last day of the Plan Year and such other date or dates as deemed necessary by the Administrator in a manner that does not discriminate in favor of Highly Compensated Employees. The Valuation Date need not necessarily be the same as the date for actuarially determining the required Employer contributions to fund Plan benefits under Section 3.1.
- 1.63 VESTED AGGREGATE ACCRUED BENEFIT:** The term Vested Aggregate Accrued Benefit means a Participant's Vested Interest in the aggregate value of his or her Accrued Benefit (or the Actuarial

Equivalent thereof) derived from Employer contributions and in any account or Accrued Benefit derived from the Participant's contributions (including rollovers).

- 1.64 VESTED INTEREST:** The term Vested Interest means a Participant's nonforfeitable percentage in the Participant's Accrued Benefit which is derived from Employer contributions, and the Participant's nonforfeitable percentage in any account or Accrued Benefit attributable to the Participant's own Plan contributions. A Participant's Vested Interest in the Accrued Benefit derived from Employer contributions will be determined in accordance with Section 4.8.
- 1.65 VOLUNTARY EMPLOYEE CONTRIBUTION:** The term Voluntary Employee Contribution means a non-deductible contribution made to the Plan by a Participant.
- 1.66 VOLUNTARY EMPLOYEE CONTRIBUTION ACCOUNT:** The term Voluntary Employee Contribution Account means the account to which a Participant's Voluntary Employee Contributions (if permitted under Section 3.5), are allocated. A Participant will at all times have a 100% Vested Interest in all amounts credited to his or her Voluntary Employee Contribution Account.
- 1.67 YEAR OF BENEFIT SERVICE:** The term Year of Benefit Service shall be used to determine a Participant's Accrued Benefit and Top Heavy Minimum Benefits and the limitations of Article 6, and shall mean an Employee's Years of Service, excluding periods while employed with an Affiliated Employer which is not an Employer or while employed as a member of any ineligible class of Employees if set forth in Section 2.1.
- 1.68 YEAR OF SERVICE:** The term Year of Service means a 12-consecutive month computation period during which an Employee completes a specified number of Hours of Service for an Employer or an Affiliated Employer (except that periods while employed with an Affiliated Employer which is not an Employer shall be excluded for purposes of determining a Participant's Years of Benefit Service), as follows:
- (a) **Definition Of Employment Commencement Date:** The Employment Commencement Date is the first day an Employee performs an Hour of Service for an Employer or an Affiliated Employer. The Re-employment Commencement Date is the first day following a Break in Service on which an Employee performs an Hour of Service for an Employer or an Affiliated Employer.
 - (b) **Year Of Service For Eligibility:** In any Plan Year in which the eligibility requirements as determined under Section 2.1 are based on Years of Service, (1) then for eligibility purposes a Year of Service is a 12-consecutive month period during which an Employee is credited with at least 1,000 Hours of Service; and (2) an Employee's initial eligibility computation period will begin on the Employee's Employment Commencement Date. The second eligibility computation period will begin on the first day of the Plan Year which begins prior to the first anniversary of the Employee's Employment Commencement Date regardless of whether the Employee is credited with at least 1,000 Hours of Service during the initial computation period. If the Employee is credited with at least 1,000 Hours of Service in both the initial eligibility computation period and in the second eligibility computation period, the Employee will be credited with two Years of Service for eligibility purposes. If any Plan Year is less than 12 months, if such Hours of Service requirement is larger than one (1) it will be proportionately reduced.

In determining eligibility under Section 2.1 and the applicable entry date under Section 2.2, an Employee will be deemed to have completed a Year of Service on the last day of the

applicable eligibility computation period during which the Employee is credited with the required Hours of Service.

- (c) **Year Of Service For Vesting and Other Purposes:** In any Plan Year in which a Participant's Vested Interest under Section 4.8 is based on Years of Service, (1) then for such purposes and for all other purposes other than for eligibility and for purposes of determining Years of Benefit Service (for Accrued Benefits and Top Heavy Minimum Benefits and Code §415 maximums under Article 6), a Year of Service is a 12-consecutive month period during which an Employee is credited with at least 1,000 Hours of Service; and (2) the Vesting computation period will be the Plan Year. If any Plan Year is less than 12 months, if such Hours of Service requirement is larger than one (1) it will be proportionately reduced.
- (d) **Year Of Service For Determining Years of Benefit Service:** In any Plan Year in which a Participant's Years of Benefit Service for Accrued Benefits and Top Heavy Minimum Benefits are based on Years of Service, (1) then for such purposes a Year of Service is a 12-consecutive month period during which an Employee is credited with at least 1000 Hours of Service with an Employer; and (2) the computation period for purposes of determining Years of Benefit Service will be the Plan Year. If any Plan Year is less than 12 months, if such Hours of Service requirement is larger than one (1) it will be proportionately reduced.
- (e) **Year Of Service For Determining Code §415 Maximums:** In any Plan Year in which a Participant's Years of Benefit Service (for Accrued Benefits and Top Heavy Minimum Benefits) are based on Years of Service, (1) then for the purpose of determining Code §415 maximums under Article 6 a Year of Benefit Service is a 12-consecutive month period during which an Employee is credited with at least 1 or more Hours of Service; and (2) the computation period for determining Code §415 maximums under Article 6 will be the same as for determining a Participant's Years of Benefit Service (for Accrued Benefits and Top Heavy Minimum Benefits) as above. If the computation period selected is the Plan Year and the Plan Year is less than 12 months, if such Hours of Service requirement is larger than one (1) it will be proportionately reduced.
- (f) **Prior Service Credit:** An Employee will not receive credit for Years of Service with any other employer for any purpose under the terms of this Plan except as otherwise set forth herein with respect to an Employer or an Affiliated Employer.
- (g) **Upon Re-employment Before A Break In Service:** If an Employee terminates employment but is re-employed by an Employer or an Affiliated Employer before incurring a Break in Service, his or her Years of Service and employment (and if the Employee was a Participant and was re-employed by an Employer, his or her Plan participation) will not be deemed to have been interrupted and, if he or she was a Participant in the Plan (or otherwise satisfied the requirements for participation specified in Section 2.1), such Employee will remain (or become) a Participant immediately upon his or her re-employment by the Employer. If an Employee was not a Participant in the Plan but otherwise satisfied the requirements for participation specified in the Plan, he or she will become a Participant on the later of the date the Employee would have entered the Plan had he or she not terminated employment with the Employer, or upon the Employee's Reemployment Commencement Date.
- (h) **Upon Re-employment After A Break In Service:** If a former Employee terminates employment and is re-employed by an Employer or an Affiliated Employer after a Break in Service, Years of Service which were completed prior to the Break in Service will be counted.

If before incurring the Break in Service he or she either (1) was a Participant, he or she will be reinstated as a Participant immediately upon re-employment by the Employer; or (2) was not a Participant but had satisfied the eligibility requirements of Section 2.1, he or she will become a Participant on the Employee's Re-employment Commencement Date (if re-employed by an Employer) or if later the date the Employee would have entered the Plan had he or she not terminated employment with the Employer; or (3) was not a Participant and had not satisfied the eligibility requirements of Section 2.1, he or she will be eligible to participate in the Plan after the satisfaction of the eligibility requirements of Article 2.

IN WITNESS WHEREOF, this Plan and Trust have been executed by the Employer and the Trustee as of the day, month and year set forth on page 1 of this Agreement.

SAMPLE COMPANY, INC.

Witnesses to the Sponsor:

By 
T. Rustee

**OWNER/PRESIDENT
SIGNS HERE**

TRUSTEE

Witnesses to the Trustee:


T. Rustee, Trustee

TRUSTEE SIGNS HERE
